

# EXHIBIT B (PART 1)

1 DANIEL KLEEGERG

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

6

DANIEL KLEEGERG, LISA STEIN, and AUDREY HAYS,

7

Plaintiffs,

8

- vs -

Case No.:  
16-CV-9517 (LAK)

9

10 LESTER EBER, ALEXBAY, LLC f/k/a LESTER EBER,  
11 LLC, THE CANANDAIGUA NATIONAL BANK & TRUST  
COMPANY, ELLIOTT W. GUMAER, JR., EBER BROS &  
12 CO., INC., EBER BROS. WINE AND LIQUOR CORP.,  
EBER BROS. WINE & LIQUOR METRO, INC.,  
EBER-CONNECTICUT, LLC AND WENDY EBER,

13

Defendants.

14

15

16 Deposition of DANIEL KLEEGERG, Plaintiff,  
17 taken pursuant to a Notice and to the Federal Rules  
18 of Civil Procedure, in the offices of DIAMOND  
19 REPORTING, INC., 150 Broadway, New York, New York,  
20 on December 19, 2018, commencing at 9:15 a.m.,  
21 before MAY JEAN WU, Notary Public.

22

23

JACK W. HUNT & ASSOCIATES, INC. - GLOBAL SCHEDULING SERVICE

1 APPEARANCES: CLINTON BROOK & PEED,  
By BRIAN C. BROOK, ESQ.,  
2 By DARYOUSH BEHBOOD, ESQ.,  
100 Church Street, 8th Floor,  
3 New York, New York 10007,  
Appearing for the Plaintiffs.

4 UNDERBERG & KESSLER LLP,  
5 By COLIN D. RAMSEY, ESQ.,  
50 Fountain Plaza, Suite 320,  
6 Buffalo, New York 14202,  
Appearing for the Defendants.

7 CALIHAN LAW,  
8 By ROBERT CALIHAN, ESQ.,  
16 East Main Street,  
9 Rochester, New York 10017,  
Appearing for the Estate of  
10 Elliott W. Gumaer, Jr.

11 ALSO PRESENT:  
LISA STEIN  
12 LESTER EBER  
WENDY EBER  
13

14  
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16  
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18  
19  
20 D A N I E L K L E E B E R G, called as a  
21 witness, having been first duly sworn by a Notary  
22 Public of the State of New York, was examined and  
23 testified as follows:

JACK W. HUNT & ASSOCIATES, INC. - GLOBAL SCHEDULING SERVICE  
1120 Liberty Building  
Buffalo, New York 14202 - (716) 853-5600

D. Kleeberg - Ramsey - 12/19/18

1

2 EXAMINATION BY MR. RAMSEY:

3

4 MR. RAMSEY: Please pre-mark these as  
5 exhibits.

6 The following were marked for Identification:

7 KLEEBERG EXH. 1 E-mail dated 10/6/07

8 KLEEBERG EXH. 2 A letter dated 12/10/01

9 KLEEBERG EXH. 3 Certification of medical  
10 expenses

11 KLEEBERG EXH. 4 A letter dated 8/6/07

12 KLEEBERG EXH. 5 A letter dated 11/30/07

13 KLEEBERG EXH. 6 Benefit determination for  
14 Daniel Kleeberg

15 KLEEBERG EXH. 7 E-mails dated 8/29/14 and  
16 8/28/14

17 KLEEBERG EXH. 8 E-mail dated 12/17/07

18 KLEEBERG EXH. 9 Promissory note.

19 KLEEBERG EXH. 10 A letter dated 8/11/03

20 KLEEBERG EXH. 11 A letter dated 8/11/04

21 KLEEBERG EXH. 12 E-mail dated 9/1/09

22 KLEEBERG EXH. 13 E-mail dated 10/9/09

23 KLEEBERG EXH. 14 E-mail dated 12/10/13

D. Kleeberg - Ramsey - 12/19/18

1 KLEEBERG EXH. 15 E-mails dated 2/5/15 and  
2 2/4/15  
3 KLEEBERG EXH. 16 E-mail dated 2/5/16  
4 KLEEBERG EXH. 17 A letter dated 12/15/09  
5 KLEEBERG EXH. 18 Note  
6 KLEEBERG EXH. 19 A letter dated 3/22/16  
7 KLEEBERG EXH. 20 A letter dated 4/2/10  
8 KLEEBERG EXH. 21 Non-disclosure agreement  
9 KLEEBERG EXH. 22 A letter dated 4/27/10  
10 KLEEBERG EXH. 23 A letter dated 10/27/10  
11 KLEEBERG EXH. 24 A letter dated 11/19/10  
12 KLEEBERG EXH. 25 A letter dated 12/13/10  
13 KLEEBERG EXH. 26 E-mail dated 1/12/11  
14 KLEEBERG EXH. 27 Sally Kleeberg's expenses  
15 paid by Mr. Eber  
16 KLEEBERG EXH. 28 Letter  
17 KLEEBERG EXH. 29 E-mail dated 6/3/16  
18 KLEEBERG EXH. 30 Letter of agreement among  
19 Cousins concerning Eber  
20 Brothers lawsuit  
21 KLEEBERG EXH. 31 E-mail dated 6/3/16  
22 KLEEBERG EXH. 32 E-mail dated 10/30/16  
23 KLEEBERG EXH. 33 E-mail dated 12/13/16

D. Kleeberg - Ramsey - 12/19/18

1 BY MR. RAMSEY:

2 Q. Please state your name for the record.

3 A. Daniel Kleeberg.

4 Q. Where do you live?

5 A. 8606 River Preserve Drive, Bradenton,  
6 Florida 34212.

7 Q. Good morning, Mr. Kleeberg. We met off  
8 the record. My name is Colin Ramsey and I  
9 represent a number of the defendants in the lawsuit  
10 that we're here to talk about this morning.

11 I'm sure your attorney has essentially  
12 explained what's going to take place, but let me go  
13 over a few ground rules so that we're on the same  
14 page, okay?

15 A. Sure.

16 Q. Everything that is said this morning or  
17 most probably this afternoon is being taken down by  
18 the court reporter, my questions and your answers.  
19 Therefore, we need a verbal response to any  
20 questions, whether it calls for a "yes" or "no".  
21 Whatever the response calls for, she can't take  
22 down head nods, "uh-huhs", "uh-uhs" or things like  
23 that, okay?

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1 A. Sure, yes.

2 Q. All right, another rule, you're going  
3 to know where I'm going with my question a lot of  
4 the time. Let me get it out before you start to  
5 answer for two reasons, the first being it's very  
6 difficult for our court reporter to take down  
7 competing voices. Second, there might be something  
8 at the end of the question that somehow changes it,  
9 so make sure that you know exactly what it is I'm  
10 asking. Fair enough?

11 A. Yes.

12 Q. If you don't understand a question,  
13 don't hear it or you're not sure at what I'm  
14 getting at, just let me know. I'm happy to try and  
15 rephrase it or re-ask it, okay?

16 A. Yes.

17 Q. If you don't know the answer to a  
18 question, that's fine too. We don't want guesses.  
19 If you've got a reasonable assumption or a  
20 reasonable estimate, depending on what the question  
21 is, that's fine, but no one's interested in guesses  
22 or assumptions, okay?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. All right, if you need a break at any  
2 time, just let us know. If you want to get up and  
3 stretch your legs or to use the bathroom, that's  
4 fine. Just give us the heads up, okay?

5 A. Yes.

6 Q. Fair enough.

7 What, if anything, did you review in  
8 preparation for your deposition today?

9 A. Just a general discussion with our  
10 attorney.

11 Q. All right, I don't want to hear about  
12 what the discussions with your attorneys were. Did  
13 you review any documents though knowing that you  
14 were coming here to give your deposition?

15 A. No, I did not.

16 Q. Other than your attorneys, did you have  
17 discussions with anyone about coming here to give a  
18 deposition?

19 A. Yes.

20 Q. Who did you speak with?

21 A. My oldest son.

22 Q. What's his name?

23 A. Adam.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Adam Kleeberg?

2 A. Yes.

3 Q. What did you talk about with your son?

4 A. Just that I was coming to New York to  
5 be deposed.

6 Q. Did you talk about the substance of the  
7 lawsuit or any of the questions you thought you  
8 might be asked?

9 A. No.

10 Q. Did you talk with Lisa Stein at all  
11 about your deposition this morning?

12 A. This morning?

13 Q. No, about your deposition in general,  
14 whether you talked to her this morning for some  
15 time.

16 A. Yes, I did.

17 Q. When did you talk with Lisa about the  
18 deposition?

19 MR. BROOK: Excluding instances where you  
20 both were talking with your attorneys.

21 THE WITNESS: Right.

22 MR. RAMSEY: Fair enough.

23 BY MR. RAMSEY:

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1 A. I would say about three weeks ago.

2 Q. What did you discuss with Lisa about  
3 three weeks ago?

4 A. We discussed how the procedure might  
5 go.

6 Q. Okay, and specifically what did you  
7 talk about the procedure?

8 A. The types of questions that could be  
9 asked.

10 Q. You had a back and forth with Lisa  
11 about what questions you thought you were going to  
12 be asked and what possible questions she thought  
13 she was going to be asked?

14 A. Yes.

15 Q. Anyone else present for that  
16 discussion?

17 A. No.

18 Q. Any discussions with Audrey Hays about  
19 your deposition?

20 A. Yes.

21 Q. When did you talk with Audrey?

22 A. Three weeks ago.

23 Q. That was a separate discussion than the

D. Kleeberg - Ramsey - 12/19/18

1 one you had with Lisa?

2 A. Yes.

3 Q. What was the content of your discussion  
4 with Audrey?

5 A. Very general, just very unspecific  
6 because she just wanted to know what I thought they  
7 might ask.

8 Q. So it was a similar discussion in that  
9 you were talking about questions that you or Audrey  
10 might be asked or you thought you might be asked?

11 A. Yes.

12 Q. Just so the record's clear, what is  
13 your relationship to both Lisa Stein and Audrey  
14 Hays?

15 A. Lisa Stein is my sister. Audrey Hays  
16 is my cousin, my first cousin.

17 Q. The three of you are the three named  
18 plaintiffs in this lawsuit, correct?

19 A. Yes.

20 Q. Let me jump back for a record. What's  
21 your date of birth?

22 A. 3/20/52.

23 Q. The River Preserve address you gave to

D. Kleeberg - Ramsey - 12/19/18

1 the court reporter at the beginning, how long have  
2 you resided at that address?

3 A. About a year and a half.

4 Q. Who do you live there with?

5 A. My wife.

6 Q. What's her name?

7 A. Lisa.

8 Q. Kleeberg?

9 A. Yes.

10 Q. Anyone else?

11 A. No.

12 Q. You referenced your son Adam. Any  
13 other children?

14 A. Yes.

15 Q. Who are the other children?

16 A. Justin Kleeberg.

17 Q. Where do Adam and Justin live?

18 A. Adam lives in Marietta, Georgia.

19 Justin lives in Manhattan.

20 Q. Do you know where Lisa and Audrey live?

21 A. Lisa lives in Atlantic City in New  
22 Jersey. Audrey lives in Colorado. I forgot the  
23 name of the town, the city.

D. Kleeberg - Ramsey - 12/19/18

1 Q. How often not specifically related to  
2 this lawsuit or anything to do with it, how often  
3 do you speak with Lisa?

4 A. I would say once a week.

5 Q. What about Audrey?

6 A. Once every four weeks.

7 Q. Once a month roughly?

8 A. Yes.

9 Q. Have your conversations with either of  
10 them increased since this lawsuit has been going  
11 on?

12 A. Only with Audrey.

13 Q. Do you speak more than once a month  
14 with Audrey now or was it less frequently prior to  
15 the lawsuit?

16 A. More.

17 Q. Is that specifically to do with  
18 discussing something to do with the lawsuit?

19 A. Yes.

20 Q. How often do you speak with Audrey or  
21 how often have you spoken with her since the  
22 lawsuit was started?

23 A. Could you rephrase that?

D. Kleeberg - Ramsey - 12/19/18

1 Q. Sure, you indicated that you've spoken  
2 more since the lawsuit was commenced with Audrey  
3 than you had in the past. I'm wondering if you can  
4 give me a sense of how often you're speaking to her  
5 these days.

6 MR. BROOK: Again excluding conversations  
7 among all plaintiffs?

8 MR. RAMSEY: I'm not looking for the content  
9 at this point.

10 MR. BROOK: Okay, so I guess can you just  
11 clarify your question as to whether you're talking  
12 just the two of them or more people?

13 BY MR. RAMSEY:

14 Q. You and Audrey speak on somewhat of a  
15 regular basis, correct?

16 A. Yes.

17 Q. Okay, and it sounded from your previous  
18 answer that that has increased since this lawsuit  
19 has been going on, is that accurate?

20 A. No.

21 Q. So it's the same that you speak with  
22 her now, the same amount, about once a month that  
23 you had prior to the lawsuit?

D. Kleeberg - Ramsey - 12/19/18

1           A.    No, prior to the lawsuit, you didn't  
2   ask that question. Prior to the lawsuit, we did  
3   not speak for many, many months.

4           Q.    So prior to the lawsuit, on a yearly  
5   basis you talked to her a couple of times a year?

6           A.    Yes.

7           Q.    Okay, and just so we're both on the  
8   same page, since the lawsuit it's about once a  
9   month?

10          A.    Yes.

11          Q.    The purpose of those conversations that  
12   you have with Audrey about on a monthly basis is to  
13   discuss the status of the lawsuit?

14          A.    Yes.

15          Q.    Those conversations are on the phone, I  
16   assume?

17          A.    Yes.

18          Q.    Do you ever e-mail Audrey discussing  
19   what's going on with the lawsuit?

20          A.    Not that I can recall.

21          Q.    Do you ever e-mail Lisa discussing  
22   anything to do with the lawsuit?

23          A.    Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. How often ballpark do you exchange  
2 e-mails with Lisa having something to do with the  
3 lawsuit?

4 A. Only after we have had any conversation  
5 with our attorneys.

6 Q. The communications, the e-mail  
7 communications, that you're talking about, are  
8 those limited to you and Lisa or is there someone  
9 else on the e-mail strand?

10 A. It would include Brian.

11 Q. Brian Brook, your attorney?

12 A. Correct.

13 Q. Any e-mails that excluded Brian that's  
14 just you and Lisa?

15 A. Not that I can recall.

16 Q. It's my understanding your mother was  
17 Sally Kleeberg.

18 A. Yes.

19 Q. She's now deceased?

20 A. Yes.

21 Q. When did she pass away?

22 A. 2000 and -- what's today, 2018 -- 2014.

23 Q. Your mother was the sister of Lester

D. Kleeberg - Ramsey - 12/19/18

1 Eber?

2 A. Yes.

3 Q. We're going to talk more about the Eber  
4 businesses in a bit, but was your mother involved  
5 at all in the operations of any of the Eber  
6 businesses?

7 A. No.

8 Q. What was your father's name?

9 A. Stanley Kleeberg.

10 Q. Was he involved in any of the  
11 operations of the Eber businesses?

12 A. Yes.

13 Q. What do you recall him doing with  
14 respect to the Eber businesses?

15 A. He was the general manager of our  
16 Buffalo office.

17 Q. Can you give me an approximate date  
18 range when he held that position?

19 A. I couldn't tell you when he started. I  
20 could tell you that he never officially retired.

21 Q. By that you mean he passed away before  
22 he had a chance to retire?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. When did he pass away?

2 A. 2007.

3 Q. So he was working up until the time of  
4 his death in some capacity anyway?

5 A. Yes.

6 Q. Other than being a general manager of  
7 the Buffalo office, did he hold any other positions  
8 with any Eber businesses?

9 A. I believe he was on the board of  
10 directors.

11 Q. Do you know what time frame he would  
12 have been on the board?

13 A. No.

14 Q. Was he on the board at the time of his  
15 death, to your understanding?

16 A. I don't know.

17 Q. Did you grow up in Buffalo?

18 A. Yes.

19 Q. Your dad was the general manager of the  
20 Buffalo office while you were growing up?

21 A. General manager/vice president.

22 Q. Where was that office in Buffalo  
23 located?

D. Kleeberg - Ramsey - 12/19/18

1           A.    Two locations, one on William Street  
2   and one on North Bailey Ave.

3           Q.    When you were a teenager, did you have  
4   any employment with any of the Eber businesses --

5           A.    Yes.

6           Q.    (Continuing) that your father was the  
7   general manager?

8           A.    Yes.

9           Q.    What did you do?

10          A.    I worked in the warehouse.

11          Q.    When do you recall doing that? In high  
12   school?

13          A.    Yes.

14          Q.    A summer job or did you do it during  
15   the year as well?

16          A.    Summer.

17          Q.    Other than the summers in the warehouse  
18   growing up, any other position you held with any of  
19   the Eber businesses?

20          A.    When I was growing up?

21          Q.    Yes.

22          A.    No.

23          Q.    Did you continue working in the

D. Kleeberg - Ramsey - 12/19/18

1 warehouse when you were in college?

2 A. Yes.

3 Q. Where did you go to college?

4 A. I went to Oglethorpe University and  
5 then I went to the University of Jacksonville in  
6 Florida and graduated from the University of  
7 Buffalo, O-G-L-E-T-H-O-R-P-E.

8 Q. So you had some classes in Oglethorpe  
9 and some in Jacksonville but ultimately graduated  
10 from UB?

11 A. Correct.

12 Q. What was your degree in from UB?

13 A. I got an associate's degree in  
14 business.

15 Q. What year was that?

16 A. I believe it was 1975.

17 Q. Any further formal education after  
18 obtaining your associate's from UB?

19 A. Regarding college?

20 Q. Well, college or any other formal  
21 education, whether it was trade school or some type  
22 of certification.

23 A. I received a real estate license two

D. Kleeberg - Ramsey - 12/19/18

1 years ago.

2 Q. Between 1975 when you obtained the  
3 associate's and getting the real estate license two  
4 years ago, any other formal education?

5 A. Well, two years ago from now, I  
6 received a real estate license back in -- what is  
7 it, 2018 -- in 2016.

8 Q. Okay, so between 2016 and back in 1975  
9 when you obtained your associate's, any other  
10 formal education?

11 A. No.

12 Q. Back to your mother for a moment, she  
13 was the beneficiary or one of the beneficiaries of  
14 the trust established by Allen Eber, correct?

15 A. Yes.

16 Q. Who is Allen Eber?

17 A. My grandfather.

18 Q. Was he the founder of the Eber  
19 business?

20 A. Yes.

21 Q. Just for the record, what was or is the  
22 business of Eber brothers?

23 A. Liquor and wine distributor.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Do you have a recollection or do you  
2 know when it was first established?

3 A. Right after prohibition.

4 Q. Upon your mother's death, did her  
5 interest in the Allen Eber trust pass a portion to  
6 you?

7 A. Yes.

8 Q. Another portion to your sister Lisa?

9 A. Yes.

10 Q. Prior to her death, did you ever have  
11 any discussions with your mother regarding the  
12 trust or the Eber business in general?

13 A. Yes.

14 Q. What do you recall discussing with your  
15 mother?

16 A. Basic updates on how the company was  
17 proceeding.

18 Q. You were giving her updates, she was  
19 giving you updates or how did that work?

20 A. I would give her some updates when she  
21 would ask the question.

22 Q. How often in general were you updating  
23 your mother about the state of the business?

D. Kleeberg - Ramsey - 12/19/18

1           A.    Oh, maybe once a month, once every two  
2 months.

3           Q.    Was this while you were still working  
4 for Eber Brothers or that continued even after you  
5 left?

6           A.    It continued even after I left.

7           Q.    Where were you getting your information  
8 after you left to update your mother?

9           A.    Some from Lester and some from various  
10 suppliers that we dealt business with, that we did  
11 business with.

12          Q.    Do you recall any of their names, the  
13 suppliers that you had got information from?

14          A.    No, just in general.

15          Q.    Prior to her death, was your mother  
16 receiving regular distributions from the Allen Eber  
17 trust?

18          A.    Prior to her death?

19          Q.    Yes.

20          A.    Yes.

21          Q.    How often would she receive a  
22 distribution?

23          A.    No.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Do you know the amount of that  
2 distribution?

3 A. No, I do not.

4 Q. Do you know any other individuals who  
5 were receiving distributions from the trust again  
6 prior to your mother's death?

7 A. Do I know or do I assume?

8 Q. Well, I want if you know it. I don't  
9 want you to guess but if you have a reasonable  
10 belief as to someone.

11 A. No, please rephrase the question.

12 Q. Do you have a reasonable belief or  
13 understanding of other individuals who were also  
14 receiving distributions from the Allen Eber trust  
15 prior to your mother's death?

16 A. Yes.

17 Q. Who else do you believe was receiving  
18 distributions?

19 A. My sister Lisa.

20 Q. Anyone else?

21 A. No.

22 Q. What about Audrey?

23 A. I don't know.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Any discussions with either Lisa or  
2 Audrey prior to your mother's death about  
3 distributions they may have been receiving from the  
4 trust?

5 A. No.

6 Q. Any idea how much your sister was  
7 receiving in distributions?

8 MR. BROOK: Objection to the form.

9 BY MR. RAMSEY:

10 Q. Go ahead.

11 A. I only have a rough idea.

12 Q. What's your rough idea?

13 A. Around 1,000.

14 Q. How often would she receive around  
15 \$1,000.00?

16 A. Monthly.

17 Q. What's the source of that information?

18 A. Through my sister.

19 Q. Were you receiving any distributions  
20 from the trust prior to your mother's death?

21 A. No, oh, no, that's not true. Sorry,  
22 yes, I was getting a small amount.

23 Q. How often would you receive any

D. Kleeberg - Ramsey - 12/19/18

1 distributions?

2 A. About once a year.

3 Q. When you say "a small amount", how much

4 would you receive on a yearly basis?

5 A. It would vary.

6 Q. Between what and what?

7 A. I don't even remember.

8 Q. Can you give me an estimate or a

9 ballpark?

10 A. No, I cannot.

11 Q. Less than \$5,000.00?

12 A. Yes.

13 Q. Less than \$1,000.00?

14 A. Yes.

15 Q. So somewhere in the couple hundred

16 dollar range?

17 A. Yes.

18 Q. Did that amount increase after your

19 mother passed away?

20 A. Yes.

21 Q. What did it increase to?

22 A. Over 1,000.

23 Q. Do you know whether Lisa's distribution

D. Kleeberg - Ramsey - 12/19/18

1 also increased upon your mother's death?

2 A. No.

3 Q. You don't know or it didn't?

4 A. I don't know.

5 Q. After your mother passed away, did you  
6 learn anything more about who was receiving  
7 distributions from the trust --

8 A. No.

9 Q. (Continuing) other than what you  
10 already told me?

11 A. No.

12 Q. Are you currently employed?

13 A. Yes.

14 Q. Where are you employed?

15 A. Self.

16 Q. How are you self-employed?

17 A. I have a company.

18 Q. What's the name of the company?

19 A. Prestige Wine and Spirits.

20 Q. What's the business of Prestige Wine  
21 and Spirits?

22 A. Consulting with European liquor  
23 suppliers on a national level in the United States.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What type of consulting are you  
2 providing consulting work?

3 A. To provide them with access to  
4 distributors and also to help them hire brokers  
5 throughout the country.

6 Q. Is the business based in the Bradenton,  
7 Florida area?

8 A. Yes.

9 Q. Any employees?

10 A. No.

11 Q. Is the business profitable?

12 A. No.

13 Q. Do you pay yourself a salary or do --

14 A. Yes, sorry.

15 Q. What's your monthly or yearly salary or  
16 whatever is easier for you to give me?

17 A. \$7,500.00 a month.

18 Q. Are you the sole owner of the company?

19 A. No.

20 Q. Who else has an ownership interest?

21 A. My wife Lisa Kleeberg.

22 Q. You are co-owners of the company?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Is it an S corp.?

2 A. Yes, well, it's an LLC.

3 Q. An LLC?

4 A. Yes.

5 Q. How long has it been in business?

6 A. I believe since 2010.

7 Q. Does Lisa draw a salary?

8 A. Yes.

9 Q. How much?

10 A. \$300.00 a month.

11 Q. Well, does she have a formal position  
12 or title?

13 A. Just co-owner.

14 Q. When you said it's not profitable, it  
15 loses money on a yearly basis?

16 A. No, it breaks even.

17 Q. So the salary that you draw and the  
18 salary that Lisa draws and all of the expenses of  
19 the company, you get to about a break even point?

20 A. Yes.

21 Q. Are you employed anywhere else other  
22 than Prestige Wine and Spirits?

23 A. What?

D. Kleeberg - Ramsey - 12/19/18

1 Q. Are you employed anywhere else other  
2 than Prestige Wine and Spirits?

3 A. No.

4 Q. Other than the \$7,500.00 a month that  
5 you get from Prestige Wine and Spirits, do you have  
6 any other source of income currently?

7 A. Yes.

8 Q. What are your other sources of income?

9 A. Pension plan, Eber pension plan.

10 Q. How much do you receive from that?

11 A. \$2,100.00.

12 Q. Monthly?

13 A. Yes.

14 Q. Any other monthly source of income?

15 A. Social Security.

16 Q. How much do you receive from Social  
17 Security?

18 A. Around \$2,500.00 a month.

19 Q. Anything else?

20 A. Yes.

21 Q. Okay.

22 A. I draw \$4,100.00 a month off of  
23 investments.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Personal investments, in other words,  
2 unrelated to your work at Eber?

3 A. Yes.

4 Q. Is that a fixed amount or is that  
5 something with an annuity?

6 A. No, it's not an annuity. It is a fixed  
7 amount.

8 Q. What type of investment is it?

9 A. Mutual funds, stocks, bonds.

10 Q. So it doesn't vary on a monthly basis?

11 A. No.

12 Q. Any other source of income on a monthly  
13 basis?

14 A. No.

15 Q. All right, I want to jump back to your  
16 employment with Eber Brothers. We talked about you  
17 working in the warehouse in high school and in  
18 college. Following UB where you obtained an  
19 associate's in 1975, did you go back to work for  
20 Eber at some point?

21 A. Yes.

22 Q. When was that?

23 A. I believe in 1975.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What was the first position you had at  
2 Eber following graduating from UB?

3 A. Sales promotion.

4 Q. What type of responsibilities did you  
5 have in that position?

6 A. Helping to put up liquor displays and  
7 going into merchandise in retail stores.

8 Q. Where were you based?

9 A. In Buffalo.

10 Q. Was that your territory? Just the  
11 Buffalo area?

12 A. Yes.

13 Q. Was that a salaried position?

14 A. Yes.

15 Q. How much do you recall making when you  
16 first started?

17 A. 12 or 15,000 a year.

18 Q. How long did you hold the sales  
19 promotion position?

20 A. Two years.

21 Q. Your duties and responsibilities  
22 remained the same over those two years?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What happened after two years?

2 A. I was promoted to sales supervisor.

3 Q. What type of responsibilities did you  
4 have in that position?

5 A. To help manage our sales  
6 representatives.

7 Q. What was your territory?

8 A. It was Buffalo.

9 Q. Do you recall what your salary was  
10 following the promotion?

11 A. 25,000, somewhere in that neighborhood.

12 Q. How long did you hold the sales  
13 supervisor position?

14 A. Quite a few years, I would say, at  
15 least fifteen years.

16 Q. Did your territory ever expand beyond  
17 the Buffalo area?

18 A. Well, if you want to include Jamestown,  
19 Olean and our southern tier market.

20 Q. Yes, but the general western New York  
21 market?

22 A. Correct.

23 Q. Okay, and that would have been the case

D. Kleeberg - Ramsey - 12/19/18

1 for the entire fifteen years that you held that  
2 position?

3 A. Yes.

4 Q. How many salespeople were you  
5 supervising approximately?

6 A. Ten to twelve.

7 Q. Who did you report to? Who was your  
8 boss?

9 A. A gentleman named Donald Altman,  
10 A-L-T-M-A-N.

11 Q. Who was Mr. Altman's position?

12 A. General manager of Buffalo.

13 Q. Was Lester Eber involved in the  
14 business during that period, the fifteen years when  
15 you were the sales supervisor?

16 A. Yes.

17 Q. Did you have any interaction with  
18 Lester in connection with your position as the  
19 sales supervisor?

20 A. Yes.

21 Q. How often would you interact with  
22 Lester?

23 A. Quite often.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Give me a sense of what you mean by,

2 "Quite often."

3 A. I would say probably a couple of times  
4 a week.

5 Q. Is that in person or you would speak to  
6 him on the phone?

7 A. Yes.

8 Q. On the phone?

9 A. I'm sorry, in person and on the phone.

10 Q. Where was Lester based at that time?

11 A. Rochester, New York.

12 Q. Did any of your responsibilities extend  
13 to Rochester or was it just western New York and  
14 the southern tier we talked about?

15 A. Only in Rochester, excuse me, only in  
16 Buffalo and the southern tier.

17 Q. What would be the reason for you having  
18 interaction with Lester?

19 MR. BROOK: Objection to the form.

20 BY MR. RAMSEY:

21 A. To discuss our general business and any  
22 advice he might have in my capacity.

23 Q. What was Lester's position at that

D. Kleeberg - Ramsey - 12/19/18

1 time?

2 A. He was president of Eber Brothers.

3 Q. During the course of the fifteen years  
4 that you were a sales supervisor, did you see your  
5 salary increase?

6 A. Yes.

7 Q. Roughly speaking, if you worked two  
8 years as a sales supervisor, that would take us to  
9 1977 and another fifteen years takes us to about  
10 1992. Does that sound about right for the time  
11 period when you were a sales supervisor?

12 A. Yes.

13 Q. As of 1992, do you have a recollection  
14 of approximately how much you were making salary  
15 wise?

16 A. I'll say 60, 70,000.

17 Q. Your discussions that you would  
18 regularly have with Lester, did that allow you to  
19 get a sense of the overall business of Eber  
20 Brothers and not just your territory?

21 A. At times.

22 Q. What do you mean by, "At times"?

23 A. Primarily it was about what was going

D. Kleeberg - Ramsey - 12/19/18

1 on in Buffalo and then in general some of the  
2 things that were happening within the industry.

3 Q. With respect to the Buffalo market over  
4 the fifteen years, did the Eber Brothers business  
5 there improve, get worse or stay about the same?

6 A. Improve.

7 Q. Can you quantify in whatever way you  
8 can how it improved either in sales or in numbers?  
9 Is there a way you can quantify that for me?

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 A. I believe it improved not only in sales  
13 but in profitability.

14 Q. What's your basis for that belief?

15 A. We would have meetings at the end of  
16 the year to discuss our, you know, our financials  
17 and Eber Brothers-Buffalo was doing well at that  
18 time.

19 Q. When you say, "We would have meetings,"  
20 who was part of those meetings?

21 A. Lester, my father Stanley, John Altman,  
22 our general manager, and I'm not sure who else was  
23 at the meetings.

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1 Q. Were those meetings specific to Buffalo  
2 or were they to discuss the Eber business more  
3 generally?

4 A. Ninety percent was Buffalo. The rest  
5 would be the overall picture of Eber Brothers.

6 Q. Based upon your attendance at that  
7 meeting, did you have a sense of the overall  
8 picture of Eber Brothers from a financial  
9 perspective on a year-to-year basis?

10 A. Yes.

11 Q. During the fifteen years that you were  
12 the sales supervisor, not just the Buffalo area,  
13 just Eber Brothers in general, did you have an  
14 understanding whether the business improved, got  
15 worse or stayed about the same?

16 A. Please rephrase that.

17 Q. Sure, you indicated to me that the  
18 Buffalo territory business improved, to your  
19 understanding, over the fifteen years that you were  
20 the sales manager.

21 A. Not sales manager, sales supervisor.

22 Q. Sales supervisor, I'm sorry.

23 During your meetings with Lester and your

D. Kleeberg - Ramsey - 12/19/18

1 father when you at least touched on the larger Eber  
2 business over that time period, do you have an  
3 understanding or recollection whether the larger  
4 Eber Brothers business improved, got worse or  
5 stayed about the same?

6 A. My understanding is that it improved.

7 Q. That's based on those meetings?

8 A. Correct.

9 Q. Yes, but your role was limited to  
10 Buffalo?

11 A. Yes.

12 Q. What did you do in 1992?

13 A. What did I do in 1992? I honestly  
14 don't know where my position was in 1992. I don't  
15 recall what my role was in 1992.

16 Q. Did you continue to work for Eber  
17 Brothers?

18 A. Yes.

19 Q. Yes, but it was no longer as a sales  
20 supervisor?

21 A. I believe not. I believe I was  
22 elevated to general manager.

23 Q. General manager of what?

D. Kleeberg - Ramsey - 12/19/18

1 A. Eber-Buffalo.

2 Q. You took over the job from your dad?

3 A. No, just hang on one second, please.

4 Let me just think it through, yes.

5 Q. Yes, you took over the job from your  
6 dad?

7 A. Yes.

8 Q. Your dad stayed on with the company --

9 A. Yes.

10 Q. (Continuing) in some capacity?

11 A. Yes.

12 Q. Let me finish the question.

13 Your dad stayed on with the company in some  
14 capacity?

15 A. Yes.

16 Q. What was his position after you  
17 ascended to general manager?

18 A. He was still vice president.

19 Q. What were your responsibilities when  
20 you became general manager of the Buffalo market?

21 A. To oversee the operations in Buffalo.

22 Q. Did the sales team remain about the  
23 same in size as it had been when you were sales

D. Kleeberg - Ramsey - 12/19/18

1 supervisor?

2 A. It would have increased slightly.

3 Q. What salary do you recall making when

4 you were promoted to GM?

5 A. Six figures.

6 Q. Do you recall where in the six figures?

7 A. The low six figures.

8 Q. How long were you general manager of

9 the Buffalo market?

10 A. Approximately ten years.

11 Q. Did your salary increase over those ten

12 years?

13 A. Yes.

14 Q. So that takes us to the early 2000s,

15 somewhere in that range?

16 A. Yes.

17 Q. What do you recall your salary was the

18 last year that you were general manager of the

19 Buffalo market?

20 A. I don't know. I honestly don't know.

21 Q. Did you for about ten years take

22 another position with Eber, Eber Brothers?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What was that position?

2 A. There wasn't. I became vice president  
3 of Eber Brothers, senior vice president of Eber  
4 Brothers.

5 Q. You were no longer limited to just the  
6 Buffalo market?

7 A. Yes.

8 Q. What were your responsibilities as  
9 senior VP?

10 A. To help oversee the upstate market,  
11 which would have been --

12 Q. Upstate?

13 A. (Continuing) Upstate New York.

14 Q. Yes, upstate New York, different people  
15 have different definitions.

16 A. Yeah.

17 Q. What's upstate to you?

18 A. Right, upstate to me is from Buffalo to  
19 Albany.

20 Q. Were you still based in Buffalo at this  
21 time?

22 A. Yes.

23 Q. Yes, but you traveled to other places

D. Kleeberg - Ramsey - 12/19/18

1 as necessary?

2 A. Yes.

3 Q. Was Lester still the president of Eber  
4 Brothers?

5 A. Yes.

6 Q. Did you regularly interact with Lester  
7 in overseeing the upstate market?

8 A. Yes.

9 Q. How often would you see Lester in  
10 person?

11 A. Mostly when we had supplier meetings.

12 Q. How often were the supplier meetings?

13 A. It could vary. It could be three or  
14 four times a month. It could be once a month. It  
15 really was there was no frequency that I could  
16 honestly give you.

17 Q. Other than the in-person meetings,  
18 would you talk regularly with Lester on the phone  
19 about the state of the business?

20 A. Yes.

21 Q. How often did you speak to him on the  
22 phone?

23 A. At least once a week.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Were there other VPs in addition to  
2 you?

3 A. I don't know. I'm not sure of someone  
4 else's title.

5 Q. Other than Lester, were there other  
6 individuals you considered part of the management  
7 team that you worked with?

8 A. Could you be more specific?

9 Q. Sure, well, Lester was president,  
10 right?

11 A. Yes.

12 Q. You were the vice president at least  
13 during that time period anyway, correct?

14 A. Yes.

15 Q. Anyone else that was either formally  
16 designated as an officer or otherwise had an  
17 executive or a management position?

18 A. I would work with the CFO quite often.

19 Q. Who was that?

20 A. John Ryan, R-Y-A-N.

21 Q. In what capacity would you work with  
22 John Ryan?

23 A. To establish budgets for each

D. Kleeberg - Ramsey - 12/19/18

1 individual market.

2 Q. By "individual markets", you mean the  
3 cities of upstate, Rochester, Buffalo, Syracuse and  
4 Albany?

5 A. Yes.

6 Q. Where else was the Eber business  
7 located at that time in addition to upstate?

8 A. At that time, we were in Delaware,  
9 Ohio. What's the time? What's the date that you  
10 gave me?

11 Q. When you became VP of Eber Brothers.

12 A. We were in -- what did I say -- Ohio,  
13 Delaware, New York State and I am not sure on  
14 Slocum and Sons, but I believe that was in the  
15 early 2000s that we had acquired Slocum and we had  
16 also acquired Syracuse.

17 Q. When you says "New York State", did you  
18 have a presence in the New York City area in  
19 addition to upstate?

20 A. Yes.

21 Q. Your responsibilities though were  
22 limited to the upstate region and not the other  
23 states that you just mentioned or New York City?

D. Kleeberg - Ramsey - 12/19/18

1 A. That is correct.

2 Q. Were there individuals with either  
3 similar titles or similar responsibilities to you  
4 that were overseeing these other markets?

5 A. To oversee the outside markets of New  
6 York?

7 Q. Well, the role that you were playing as  
8 VP of Eber Brothers for Upstate New York, were  
9 there other individuals playing a similar role for  
10 these other markets that you were not involved in?

11 A. That I was not involved in?

12 Q. Correct.

13 A. Only Lester.

14 Q. It was your understanding that Lester  
15 was responsible for those other markets?

16 A. Yes.

17 Q. How long did you hold the position of  
18 vice president of Eber Brothers?

19 A. Till 2007.

20 Q. 2007 was when you left the company?

21 A. Yes.

22 Q. During the time period that you were  
23 the VP, did you become aware of a downturn in the

D. Kleeberg - Ramsey - 12/19/18

1 financial circumstances of Eber Brothers?

2 A. Yes.

3 Q. How did you first become aware of this  
4 downturn?

5 A. Through my conversations with Lester.

6 Q. What do you recall Lester conveying to  
7 you about some of the financial struggles that the  
8 company was facing?

9 A. That we were being squeezed quite  
10 heavily by our suppliers, which was affecting our  
11 margins.

12 Q. Did Lester have an explanation as to  
13 why the suppliers were squeezing you?

14 A. Yes.

15 Q. What was his explanation? What did he  
16 convey to you?

17 A. They were looking to increase their  
18 profitability and push us to generate more sales  
19 and also we were being threatened at the time that  
20 we needed to get to their certain numbers.

21 Q. So the actions taken by the suppliers  
22 were decreasing the profitability of Eber Brothers?

23 A. That is correct.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Are you familiar with the company  
2 Southern Wine and Spirits?

3 A. Yes.

4 Q. What, to your understanding, is the  
5 business of Southern Wine and Spirits?

6 A. In general?

7 Q. Generally speaking.

8 A. They are the largest distributor in the  
9 US market.

10 Q. They were a competitor of Eber  
11 Brothers?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Did Southern come into markets  
16 previously controlled by Eber Brothers and try to  
17 drive Eber out?

18 A. Yes, but that -- but during the time  
19 that we were there they were not there.

20 Q. At some point though, they entered the  
21 market?

22 A. Yes.

23 Q. When do you recall Southern first

D. Kleeberg - Ramsey - 12/19/18

1 entering the market?

2 A. 2005.

3 Q. What impact did Southern's actions have  
4 on the Eber businesses?

5 A. When they came in the market?

6 Q. Yes?

7 A. Devastating.

8 Q. They were the big bully essentially,  
9 correct?

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 A. Yes.

13 Q. Specifically what was the impact on the  
14 businesses of Eber once Southern decided to enter  
15 the market?

16 MR. BROOK: Objection to the form.

17 BY MR. RAMSEY:

18 A. It was it caused a tremendous upheaval  
19 with our suppliers.

20 Q. Suppliers started doing business with  
21 Southern rather than with Eber?

22 A. Not originally, no.

23 Q. Eventually?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. Did Southern approach certain Eber  
3 salespeople?

4 A. Yes.

5 Q. How many?

6 A. Thirty maybe, maybe more.

7 Q. That had a pretty significant impact on  
8 the Eber businesses?

9 A. Yes.

10 Q. At some point did Southern's actions  
11 drive Eber completely out of the New York market?

12 MR. BROOK: Objection to the form.

13 BY MR. RAMSEY:

14 A. Yes.

15 Q. Did Southern's actions drive Eber out  
16 of any of the other markets of the other states you  
17 told me about?

18 A. Yes.

19 MR. BROOK: Objection to the form.

20 THE WITNESS: Sorry.

21 BY MR. RAMSEY:

22 Q. Was that at about the same time that  
23 you left Eber in 2007?

D. Kleeberg - Ramsey - 12/19/18

1 MR. BROOK: Objection to the form.

2 BY MR. RAMSEY:

3 A. No.

4 Q. It happened before or after?

5 A. It happened before.

6 Q. Why did you leave Eber Brothers in  
7 2007?

8 A. We were in the final stages of our  
9 liquidation and I wanted to move on with a new  
10 career.

11 Q. You didn't see a whole lot of future  
12 going with Eber Brothers at that point?

13 A. No.

14 Q. You were offered a position with  
15 Southern, is that correct?

16 A. No.

17 Q. You were never offered?

18 A. No.

19 Q. Did you have any discussions with  
20 Southern --

21 A. Yes.

22 Q. Let me get the question out.

23 A. Sorry.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Did you have any discussions with  
2 Southern about a position there?

3 A. Yes.

4 Q. Who did you have those discussion with?

5 A. The principals in their New York  
6 office.

7 Q. Do you recall their names?

8 A. God, oh, it was their assistant general  
9 manager. I don't have the name off the top of my  
10 head, which I should, but I don't.

11 Q. What position was at least discussed if  
12 not offered?

13 A. There was no position offered. They  
14 told me that because of Lester that they would  
15 create a position for me if I wanted one.

16 Q. You didn't take them up on that?

17 A. No, I did not.

18 Q. How come?

19 A. Because I did not want a position that  
20 was just going to be created as a favor.

21 Q. Lester accepted a consulting role with  
22 Southern around that time, correct?

23 MR. BROOK: Objection to the form.

D. Kleeberg - Ramsey - 12/19/18

1 BY MR. RAMSEY:

2 A. I don't know.

3 Q. As you sit here today, do you have an  
4 understanding one way or the other whether Lester  
5 ever accepted any type of role with Southern?

6 A. I had no knowledge at that time.

7 Q. I'm asking as you sit here today.

8 A. Oh, today?

9 Q. Yes.

10 A. Yes.

11 Q. What's your understanding of what  
12 position, if any, Lester had with Southern?

13 A. He was to be the liaison between  
14 Southern and the State Liquor Authority.

15 Q. How did you learn that information?

16 A. Originally through various suppliers.

17 Q. One of the allegations in this lawsuit  
18 is that it was improper for Lester to accept any  
19 role with Southern. Are you aware of that  
20 allegation?

21 A. Yes.

22 Q. Is that your belief?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Why?

2 A. I thought it was a conflict of interest  
3 for the family.

4 Q. In what respect?

5 A. That any compensation that was going to  
6 be given should have been considered to include the  
7 family.

8 Q. Eber Brothers was out of business at  
9 that point, correct?

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 Q. Yes, or on its way to be out of  
13 business at that point?

14 A. Yes.

15 Q. So what was improper about Lester  
16 looking for another source of income?

17 A. Nothing improper to look for another  
18 source of income.

19 Q. When you left in 2007 to start a new  
20 career or a new venture, what did you do?

21 A. I bought into a landscape company in  
22 Florida.

23 Q. Was that Amerilawn and Landscape?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes, it was.

2 Q. When you say you bought into it, it was  
3 a going entity in 2007 already?

4 A. Yes.

5 Q. Who was the owner that you bought into?

6 A. David Berwitzky, B-E-R-W-I-T-Z-K-Y.

7 Q. What percentage of Amerilawn did you  
8 buy from David?

9 A. Fifty percent.

10 Q. How much did you pay for that fifty  
11 percent interest?

12 A. \$600,000.00.

13 Q. Were you able to pay that in cash or  
14 did you have to leverage anything to get the  
15 600,000?

16 A. I took an SBA loan.

17 Q. For the full 6?

18 A. Yes.

19 Q. Other than the SBA loan, did you invest  
20 any of your own money initially?

21 A. Yes.

22 Q. How much of your own money?

23 A. About 150,000.

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1 Q. Did you invest any of your 401(k)?

2 A. Yes.

3 Q. Was that the 150?

4 A. I would say seventy-five percent of it.

5 Q. So about seventy-five percent of the  
6 150 came from the 401(k) and twenty-five percent  
7 came from other sources?

8 A. That is correct.

9 Q. What was the business of Amerilawn? I  
10 know it was a landscape business, but more  
11 specifically what did it do?

12 A. We had contracts with residential and  
13 commercial clients to maintain their properties and  
14 also reconstruct their landscaping.

15 Q. How did you learn about Amerilawn to  
16 buy into the opportunity?

17 A. A business broker.

18 Q. So the owner that you bought the fifty  
19 percent from, you didn't know prior to the  
20 introduction by the broker?

21 A. That is correct.

22 Q. What ultimately became of Amerilawn?

23 A. It eventually went under after a couple

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1 of years.

2 Q. Did you have to file for bankruptcy at  
3 some point?

4 A. No, not, no.

5 Q. Have you ever filed for bankruptcy?

6 A. Yes.

7 Q. When did you file for bankruptcy?

8 A. Shortly after that.

9 Q. Shortly after Amerilawn went under?

10 A. Yes.

11 Q. Was the bankruptcy related to the  
12 Amerilawn investment?

13 A. Yes.

14 Q. In about 2010 you filed for bankruptcy?  
15 Does that sound about right?

16 A. I believe so.

17 Q. Did you ultimately receive a discharge?

18 A. Yes.

19 Q. When did you receive a discharge?

20 A. I would say within a year of 2011,  
21 somewhere in there.

22 Q. Any subsequent bankruptcies?

23 A. No.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What did you do employment wise after  
2 Amerilawn failed?

3 A. I was able to create a company called  
4 Prestige Wine and Spirits and was able to negotiate  
5 a deal with a company called Camus Cognac out of  
6 France.

7 Q. What was the deal that you negotiated  
8 with the cognac company?

9 A. That I would help represent them in the  
10 US market.

11 Q. Do you still have that position today?

12 A. No.

13 Q. How long did you hold that position  
14 for?

15 A. A year.

16 MR. CALIHAN: What was the name of the  
17 company?

18 THE WITNESS: It's called Camus, C-A-M-U-S.

19 BY MR. RAMSEY:

20 Q. Your position or role with the cognac  
21 company, was it similar to what you do now for  
22 Prestige, consulting for European liquor suppliers?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Providing them with access to  
2 distributors and brokers?

3 A. Yes.

4 Q. Did you draw a salary from the cognac  
5 company?

6 A. It was I was an independent contractor  
7 that would be compensated for my consulting.

8 Q. You only held that position for about a  
9 year?

10 A. A little over a year.

11 Q. Between the time of your bankruptcy and  
12 the present day, other than Prestige Wine and the  
13 cognac company, any other employment?

14 MR. BROOK: Objection to the form.

15 BY MR. RAMSEY:

16 A. Yes.

17 Q. Where else did you work?

18 A. A company called Kannon Organic Vodka.

19 Q. When did you work for Kannon Organic  
20 Vodka?

21 A. If I recall, 2001.

22 Q. What did you do for Kannon?

23 A. Again I was independent and I also set

D. Kleeberg - Ramsey - 12/19/18

1     them up with national distribution.

2             Q.     Were they a European company?

3             A.     Yes, out of Sweden.

4             Q.     Similar to the role that you played for  
5     the cognac company and that you currently perform  
6     with Prestige?

7             A.     Yes.

8             Q.     Any other employment in that time  
9     period between the bankruptcy and the present day  
10    that we haven't talked about?

11            A.     Yes.

12            Q.     What else?

13            A.     I worked with a company called PaQui --  
14    that's spelled P-a-Q-U-I -- Tequila.

15            Q.     What did you do for the tequila  
16    company?

17            A.     But that was a New York-based company.

18            Q.     You played the same role as far as  
19    introducing them to distributors and brokers, but  
20    this was a New York company as opposed to a  
21    European company?

22            A.     Yes.

23            Q.     Did you facilitate any business between

D. Kleeberg - Ramsey - 12/19/18

1 any of those three manufacturers that you told me  
2 about and any of the Eber entities?

3 MR. BROOK: Objection to the form.

4 BY MR. RAMSEY:

5 A. I believe Camus Cognac was already at  
6 Slocum and then I followed up with that.

7 Q. So did you have a role with the cognac  
8 company interfacing or interacting with Slocum?

9 A. Yes.

10 Q. Who would you deal with at Slocum?

11 A. John, John Slocum.

12 Q. You had a role with the cognac company  
13 for about a year?

14 A. A little over a year.

15 Q. What about the vodka company or the  
16 tequila company? Any role in introducing them to  
17 any of the Eber entities?

18 A. I approached Lester on the vodka  
19 company and that was it.

20 Q. Did anything come of the approach?

21 A. No, no.

22 Q. Why?

23 A. I don't think the fit according to

D. Kleeberg - Ramsey - 12/19/18

1 Lester was appropriate at the time.

2 Q. What time period are we talking about?

3 A. Oh, God, 2011, 2012.

4 Q. What about the tequila company? Any  
5 role in introducing them to any of the Eber  
6 entities?

7 A. God, I don't remember. No, I don't  
8 think so.

9 MR. RAMSEY: Off the record.

10 (Whereupon, an off-the-record discussion was  
11 held.)

12 MR. RAMSEY: It's my understanding based on  
13 a discussion with counsel off the record that the  
14 witness would like to correct something from  
15 previously.

16 BY MR. RAMSEY:

17 A. Yes, I believe we did introduce PaQui  
18 Tequila to Slocum. We probably did.

19 Q. I was actually going to follow up with  
20 that further. Do you have an understanding of how  
21 that relationship worked out for Slocum or actually  
22 was it Slocum or Eber-Connecticut?

23 MR. BROOK: Objection to the form.

D. Kleeberg - Ramsey - 12/19/18

1 BY MR. RAMSEY:

2 A. At that time Eber-Connecticut.

3 Q. Okay, and do you know whether  
4 Eber-Connecticut lost money as a result of the deal  
5 with PaQui?

6 A. I don't know.

7 Q. As you sit here today, do you have any  
8 dispute that Eber-Connecticut lost money?

9 MR. BROOK: Objection to the form.

10 BY MR. RAMSEY:

11 Q. Go ahead. You can answer.

12 A. It is possible.

13 Q. Earlier on in my questions you had  
14 talked about some e-mail exchanges that you had  
15 with Lisa Stein about this case. I think you  
16 indicated that your attorney Brian was copied on  
17 most of them or all of them. Do you recall that  
18 line of questioning?

19 A. Yes.

20 Q. Did I understand correctly that there  
21 were communications back and forth between you and  
22 Lisa about the status of the case and that you were  
23 copying Brian just to keep him in the loop, so to

D. Kleeberg - Ramsey - 12/19/18

1 speak?

2 A. Yes.

3 Q. You weren't seeking legal advice from  
4 Brian?

5 MR. BROOK: Objection to the form.

6 BY MR. RAMSEY:

7 A. No.

8 MR. RAMSEY: Okay, I'll make a document  
9 request for those e-mails and I'll follow up in  
10 writing.

11 MR. BROOK: Well, I understand the request.  
12 I'll state on the record I have no idea which  
13 e-mails are being referring to. I don't remember  
14 being copied on anything but if you want to explore  
15 further of what he may be referring to so that I  
16 can reasonably identify what is being referenced  
17 because this has been going on for a while.

18 MR. RAMSEY: Fair enough. Well, we can go  
19 back. Well, when I attach the transcript I'll send  
20 you a letter, but Mr. Kleeberg testified that there  
21 was a exchange of e-mails between him and his  
22 sister that discussed the substance of this  
23 lawsuit, so that's what I'm referring to.

D. Kleeberg - Ramsey - 12/19/18

1 MR. BROOK: Specifically you're looking for  
2 the ones where I'm merely being copied, correct?

3 MR. RAMSEY: Yes, he said that you were  
4 copied on all of them. That was his testimony, so  
5 we don't need to waste time here. The request has  
6 been made and I'll follow up in writing, but he  
7 clearly testified there was an e-mail exchange.

8 MR. BROOK: All right.

9 BY MR. RAMSEY:

10 Q. I show you, Mr. Kleeberg, what I had  
11 previously marked as Exhibit 1 for identification.  
12 Let me know when you've had a chance to review that  
13 (indicating).

14 A. Okay.

15 Q. Exhibit 1 looks to be an e-mail to  
16 Lester Eber from an individual named Lisa Semenick?

17 A. Mmmmm, yes.

18 Q. Do you know who Lisa Semenick is?

19 A. She was involved with our accounts, our  
20 financial accounting.

21 Q. When you say "our", you mean Eber  
22 Brothers?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. You're not copied on this e-mail,  
2 correct?

3 A. No.

4 Q. Had you ever seen Exhibit 1 prior to  
5 today?

6 A. What's the date on this? 2007, I don't  
7 know.

8 Q. It looks as if the subject line is, "D.  
9 Kleeberg annual cost," correct?

10 A. Yes.

11 Q. Then the body of the e-mail lists a  
12 number of items starting with the salary, correct?

13 A. Yes.

14 Q. It looks like the salary is listed as  
15 \$250,000.00?

16 A. Yes.

17 Q. Was that your salary in 2007 at Eber  
18 Brothers?

19 A. Yes.

20 Q. The next line is a monthly payment of  
21 \$60,000.00. Do you have any idea what that refers  
22 to?

23 A. Previous loans.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Previous loans that Eber Brothers made  
2 to you?

3 A. Yes.

4 Q. When it says "monthly payment", was  
5 that a payment you were receiving or a payment you  
6 were making?

7 A. A payment I was receiving.

8 Q. So in 2007 you were receiving  
9 \$60,000.00 a month?

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 A. I don't recall receiving that amount of  
13 money on a monthly basis on top of my salary.

14 Q. You were receiving some amount of  
15 money? You're just not sure if that's the figure?

16 MR. BROOK: Objection to the form. It  
17 mischaracterizes his testimony.

18 BY MR. RAMSEY:

19 Q. You can answer.

20 A. Yes, can you answer the question again?

21 Q. Sure, so in addition to your salary,  
22 you recall receiving some additional amount of  
23 money that was a loan and you're just not sure of

D. Kleeberg - Ramsey - 12/19/18

1 the amount?

2 A. That is correct.

3 Q. If you go down a few lines, it looks  
4 like there's an employer contribution to a 401(k)  
5 of \$6,600.00. Was Eber Brothers making a  
6 contribution yearly to your 401(k) in that amount?

7 A. Yes.

8 Q. A couple of lines down, it looks like  
9 you had an auto allowance of just shy of  
10 \$16,000.00?

11 A. Yes.

12 Q. A Westwood County Club membership of  
13 \$9,000.00?

14 A. Yes.

15 Q. Then above those, the country club,  
16 expenses of just over \$55,000.00, what were those  
17 expenses?

18 A. They in my opinion would be restaurant  
19 expenses, travel expenses, bar expenses.

20 Q. Reimbursements for client entertainment  
21 and things like that?

22 A. Yes.

23 Q. You would have to document that when

D. Kleeberg - Ramsey - 12/19/18

1 you made a purchase or extended money? In order to  
2 get repaid, you would have to document that in some  
3 way?

4 A. Yes.

5 Q. When you would make those types of  
6 outlays, would you do it on a personal credit card  
7 or pay from your own money or was there a company  
8 card that you used?

9 A. A company credit card.

10 Q. The bill for the company credit card,  
11 did that go to you or did that go to someone else?

12 A. That would go to someone else.

13 Q. Was there any limit either on a monthly  
14 or yearly basis as to how much you could charge to  
15 the company card?

16 A. No.

17 Q. Do you ever recall anyone ever raising  
18 any issue with the amount that you were charging to  
19 the company card?

20 A. Yes.

21 Q. Who would raise that issue?

22 A. John Ryan.

23 Q. Was that a one-time occurrence or would

D. Kleeberg - Ramsey - 12/19/18

1 John regularly have conversations with you about  
2 how much they were being charged?

3 MR. BROOK: Objection to the form.

4 BY MR. RAMSEY:

5 Q. Go ahead.

6 A. Occasionally.

7 Q. Occasionally a couple of times a year  
8 or a couple of times a month?

9 MR. BROOK: Objection to the form.

10 BY MR. RAMSEY:

11 A. A few times a year.

12 Q. In response to those conversations,  
13 would you reduce the amount that you were charging  
14 the company card?

15 A. Yes.

16 Q. Were the few times a year conversations  
17 that John Ryan would have with you, was that  
18 multiple years or are you talking about a single  
19 year?

20 MR. BROOK: Objection to the form.

21 BY MR. RAMSEY:

22 A. Multiple years.

23 Q. Do you know how many individuals at

D. Kleeberg - Ramsey - 12/19/18

1 Eber Brothers had access to the company credit  
2 card?

3 A. No.

4 Q. I'm going show you what I marked as  
5 Exhibit 2. Take a look at that and tell me when  
6 you've had a chance. Are you ready (indicating)?

7 A. I'm sorry?

8 Q. Have you a chance to review Exhibit 2?

9 A. Yes.

10 Q. Have you seen that document before?

11 A. Yes.

12 Q. It looks to be a letter from a James  
13 Shaw to John Ryan at Eber Brothers?

14 A. Yes.

15 Q. You're CC'd on it, correct?

16 A. Yes.

17 Q. It's dated December 10, 2001?

18 A. Yes.

19 Q. It's talking about your salary  
20 structure at Eber Brothers?

21 A. Yes.

22 Q. Specifically what was this letter  
23 addressing? What does this letter address?

D. Kleeberg - Ramsey - 12/19/18

1 A. My situation with my divorce.

2 Q. How is it addressing your situation  
3 with your divorce?

4 A. How to deal with the implications of my  
5 potential tax consequences.

6 Q. Discussing how much should be withheld  
7 to deal with any tax implications?

8 A. That is correct.

9 Q. It looks like your base salary in 2001  
10 was \$225,000.00?

11 A. Yes.

12 Q. Well, the last paragraph talks about  
13 smoothing out your paychecks. Do you have any idea  
14 what was meant by smoothing out your paychecks?

15 A. No.

16 Q. When is the last time prior to today  
17 you recall seeing this document?

18 A. Back in 2001.

19 Q. It doesn't specifically reference your  
20 divorce anywhere in the body of Exhibit 2, does it?

21 A. No.

22 Q. It's just your understanding and  
23 recollection that that was the driver of this

D. Kleeberg - Ramsey - 12/19/18

1 letter?

2 A. Yes.

3 Q. Okay, so you were making \$250,000.00 in  
4 2007 based on Exhibit 1 that had increased from  
5 \$225,000.00 in 2001 based on Exhibit 2, correct?

6 A. Yes.

7 Q. I show you what's been marked as  
8 Exhibit 3. Take a moment to review that  
9 (Indicating).

10 MR. CALIHAN: Were these marked as  
11 defendant's exhibits?

12 MR. RAMSEY: Yes, they're marked as  
13 Kleeberg's.

14 MR. CALIHAN: Okay.

15 MR. RAMSEY: Kleeberg's 1, 2, 3.

16 BY MR. RAMSEY:

17 Q. Have you had a chance to review Exhibit  
18 3?

19 A. Yes, I reviewed it.

20 Q. That document is entitled Eber Brothers  
21 Wine and Liquor Corp. Certification of Medical  
22 Expenses, correct?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Have you seen this document before?

2 A. Yes.

3 Q. What was the purpose of this document?

4 A. Any outside expenses that I had from  
5 our medical plan I was able to submit for  
6 reimbursement.

7 Q. You're listed on Exhibit 3 as is Gail  
8 Kleeberg, Justin Kleeberg and Adam Kleeberg,  
9 correct?

10 A. Yes.

11 Q. Then there's a dollar amount associated  
12 with each of you?

13 A. Yes.

14 Q. Okay, and that dollar amount is medical  
15 expenses that you were required to incur in this  
16 year, which was 2000?

17 A. Yes.

18 Q. Those expenses were above and beyond  
19 what the insurance would cover?

20 A. Yes.

21 Q. Did Eber Brothers also provide you with  
22 an insurance plan?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. What type of expenses fell outside the  
2 insurance plan that Eber Brothers provided?

3 A. Any co-pays, whether it was previous  
4 medication or doctor's visits, that's what I can  
5 recall.

6 Q. The total amount listed on Exhibit 3 is  
7 just over \$6,600.00, correct?

8 A. Yes.

9 Q. Is it your recollection that there was  
10 approximately \$6,600.00 in co-pays and medications  
11 in 2000?

12 A. I would also include surgeries.

13 Q. Do you recall someone having to undergo  
14 surgery in 2000?

15 A. I believe -- and again I might be wrong  
16 on my date -- that I incurred a shoulder surgery  
17 back in 2000.

18 Q. It looks like it's just shy of  
19 \$3,000.00 associated with you and a little over  
20 \$3,000.00 associated with Gail Kleeberg, correct?

21 A. Yes.

22 Q. Is Gail your ex-wife?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Do you recall anything that would have  
2 occurred from a medical standpoint to Gail in 2000  
3 that would have required \$3,000.00 above and beyond  
4 the insurance that was in place?

5 A. No, I do not recall.

6 Q. That total amount, that \$6,600.00, was  
7 reimbursed to you by Eber Brothers?

8 A. Yes.

9 Q. This happened on a yearly basis?  
10 Whatever uncovered expenses you had from a medical  
11 perspective were reimbursed by Eber Brothers?

12 A. Yes.

13 Q. I show you Exhibit 4 that I previously  
14 marked. Let me know when you've had a chance to  
15 look at that (indicating).

16 A. Yes.

17 Q. Are you ready?

18 A. Yes.

19 Q. Exhibit 4 is an August 6, 2007 letter  
20 on Eber Brothers' letterhead from a Mark Shevlin,  
21 correct?

22 A. Yes.

23 Q. His title is benefits manager?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. Do you know who Mark was or is?

3 A. Yes.

4 Q. Who is Mark Shevlin?

5 A. Our benefits manager.

6 Q. At Eber Brothers?

7 A. Yes.

8 Q. Okay, and the body of the letter  
9 indicates that effective September 1, 2007 you were  
10 to become a consultant to Eber Brothers at the rate  
11 of \$10,000.00 per month?

12 A. Yes.

13 Q. Was this after the time that you had  
14 left Eber Brothers?

15 A. It was right at the time.

16 Q. Okay, and you were at least in the  
17 process of heading down to Florida for Amerilawn?

18 A. Yes.

19 Q. What were the services that you were  
20 going to provide in return for the \$10,000.00 a  
21 month payment?

22 A. Helping to renegotiate our contract on  
23 our lease in Buffalo on our office.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Anything else?

2 A. Working on discussing with certain  
3 suppliers our situation and helping to possibly get  
4 a reduction of what we owed them.

5 MR. BROOK: I want to briefly note for the  
6 record that this document does not have Bates  
7 numbers and it does not appear to have been  
8 produced to us in this litigation, and accordingly,  
9 we object to its use and we'll certainly be  
10 discussing it further later.

11 MR. RAMSEY: My understanding is that it was  
12 produced. I clearly grabbed the document without  
13 the Bates number, but we can deal with that later.

14 BY MR. RAMSEY:

15 Q. The lease in Buffalo, Eber Brothers was  
16 essentially out of business or going out of  
17 business at that point, correct?

18 A. Yes.

19 Q. What type of renegotiation was  
20 contemplated given the lack of business?

21 A. Exactly what you just said, the lack of  
22 business, no business, we were renegotiating or  
23 trying to get a better scenario with the company

D. Kleeberg - Ramsey - 12/19/18

1 called Benderson Development.

2 Q. Part of the consultant fee was you were  
3 to be the point person to deal with Benderson?

4 A. Originally, yes.

5 Q. Who did you deal with at Benderson?

6 A. Randy Benderson, the owner.

7 Q. What was the ultimate result of your  
8 negotiations on the lease?

9 A. They would not reduce what we owed at  
10 that time.

11 Q. So your efforts were unsuccessful?

12 A. That is correct.

13 Q. That ultimately resulted in a lawsuit,  
14 correct, between Benderson and Eber Brothers?

15 A. I believe so.

16 Q. We can talk about that in a minute.

17 The discussions you had with suppliers to  
18 reduce the amount that was owed, what was the  
19 result of those discussions?

20 A. I believe in the most part they were  
21 favorable, but I can't be sure because I was not  
22 part of the final arrangements.

23 Q. When you say you weren't part of the

D. Kleeberg - Ramsey - 12/19/18

1 final arrangements, you had initial discussions  
2 with suppliers, but ultimately someone else made  
3 the final deal for lack of a better word?

4 A. Yes.

5 Q. Who, to your understanding, made the  
6 final deal?

7 A. My assumption was Lester Eber.

8 Q. During the course of your involvement  
9 with these suppliers, did you discuss specific  
10 dollar amounts and specific reductions?

11 A. No, just the consideration of what  
12 happened to Eber Brothers and how important it  
13 would be for us to get a reduction on what was owed  
14 to them.

15 Q. Were you ever provided with any type of  
16 document memorializing whatever reductions the  
17 suppliers were willing to give to Eber Brothers?

18 A. No.

19 Q. Did you ever have a discussion with  
20 Lester or anyone else conveying to you what these  
21 reductions may have been?

22 A. I may have.

23 Q. As you sit here today, do you recall

D. Kleeberg - Ramsey - 12/19/18

1 what were the discussions along those lines?

2 A. No.

3 Q. As you sit here today, you just don't  
4 know one way or other what, reductions, if any, the  
5 suppliers agreed to give?

6 A. I don't know specifically what  
7 reductions.

8 Q. Do you know whether there was any  
9 reduction?

10 A. Yes.

11 Q. What's that based on?

12 A. Based on suppliers getting back to me  
13 saying that they had settled with Lester.

14 Q. With what suppliers do you specifically  
15 remember advising you that they had settled and  
16 there was a reduction?

17 A. I'm trying to think. I spoke with a  
18 couple of our wineries and I'm trying to remember  
19 their names. I can't recall their names right now,  
20 but they had said that they would talk to Lester  
21 and then try to work out an arrangement with him.

22 Q. Yes, but you can't remember the names  
23 as you sit here?

D. Kleeberg - Ramsey - 12/19/18

1           A.    I cannot at this point.  It's been  
2   eleven years.

3           Q.    Other than the lease renegotiation and  
4   some initial discussions you had with some  
5   suppliers, anything else that you did to benefit  
6   Eber Brothers in return for receiving \$10,000.00 a  
7   month?

8           MR. BROOK:  Objection to the form.

9           BY MR. RAMSEY:

10          A.    No.

11          Q.    How long were you a consultant  
12   receiving \$10,000.00 a month?

13          A.    For roughly a year.

14          Q.    So until approximately August of 2008?

15          A.    Approximately I think it went into  
16   December of 2008.

17          Q.    The discussions that you had either  
18   with Randy Benderson or any of these suppliers that  
19   you can't recall, did that take place over the  
20   entirety of that year period or were they front  
21   loaded?

22          A.    They were more front loaded.

23          Q.    After the initial discussions with the

D. Kleeberg - Ramsey - 12/19/18

1 suppliers and after the time period when Benderson  
2 wasn't willing to bulge, what, if anything, did you  
3 do on behalf of Eber Brothers to continue drawing  
4 the \$10,000.00 a month payment?

5 A. We just stayed in contact with Lester.

6 Q. At that point, it was Lester trying to  
7 finalize the deals with the suppliers though?

8 A. Ultimately, yes.

9 Q. I'm going to show you what I marked as  
10 Exhibit 5 (indicating).

11 MR. RAMSEY: I think we're going to have the  
12 same issue, Brian. It is my understanding that  
13 they were produced, but there's not a Bates number  
14 on them.

15 MR. BROOK: It's not in our data base.

16 Let's note for the record that Wendy Eber  
17 presently stated that the documents were all  
18 produced.

19 THE WITNESS: Do you want to see this?

20 MR. BROOK: I have it.

21 THE WITNESS: Okay.

22 BY MR. RAMSEY:

23 Q. Did you have a chance to review Exhibit

D. Kleeberg - Ramsey - 12/19/18

1 5?

2 A. Yes.

3 Q. Exhibit 5 is a November 30, 2007 letter  
4 to you from Mark Shevlin, correct?

5 A. Yes.

6 Q. It's discussing the status of your  
7 health care coverage?

8 A. Yes.

9 Q. As of that time, you were still covered  
10 under the Eber Brothers health insurance?

11 A. Yes.

12 Q. The content of the letter is  
13 essentially discussing what options you had going  
14 forward?

15 A. Yes.

16 Q. Do you recall what option you  
17 ultimately selected?

18 A. I believe I went with a Florida plan.

19 Q. Instead of one of the COBRA plans  
20 through Eber Brothers?

21 A. Yes.

22 Q. Do you know when your coverage through  
23 the Florida plan started?

D. Kleeberg - Ramsey - 12/19/18

1 A. No, I do not.

2 Q. The letter indicates that at least your  
3 current coverage as of the date of that letter was  
4 going to terminate effective January 1 of 2008?

5 A. Yes.

6 Q. Okay, and it's your recollection as you  
7 sit here that you elected to proceed with an  
8 alternate option down in Florida at that point?

9 A. Yes, beginning in January of 2008.

10 Q. The second to last sentence of Exhibit  
11 5 indicated that you would no longer be able to use  
12 your American Express card for miscellaneous health  
13 care expenses. Did you still have the company  
14 credit card as of November 30, 2007?

15 A. I do not believe I did.

16 Q. After you left and you became a  
17 consultant, at any time during the consultant  
18 period, did you still have the company credit card?

19 A. No.

20 Q. Was there a reason or do you have a  
21 recollection why Mr. Shevlin is referencing no  
22 longer being able to use this in November of 2007  
23 if you no longer had it?

D. Kleeberg - Ramsey - 12/19/18

1 MR. BROOK: Objection to the form.

2 BY MR. RAMSEY:

3 A. My assumption is it was protocol.

4 Q. Is it possible that you still had it at  
5 this point given that Mr. Shevlin is referencing it  
6 in this letter?

7 MR. BROOK: Objection to the form.

8 BY MR. RAMSEY:

9 A. It is possible.

10 Q. One of the things that you had used the  
11 card for, whatever time period you had it for, one  
12 of the things that you had used the company card  
13 for was for miscellaneous health care expenses?

14 A. That is correct.

15 Q. The expenses that we talked about on  
16 one of the prior exhibits that you were looking to  
17 get reimbursed, why wouldn't those expenses go onto  
18 the company credit card?

19 MR. BROOK: Objection to the form.

20 BY MR. RAMSEY:

21 A. Please restate the question.

22 Q. Sure, one of the previous exhibits --  
23 and you can pull it out if you need to -- was a

D. Kleeberg - Ramsey - 12/19/18

1 handwritten listing of some un-reimbursed medical  
2 expenses that Eber Brothers paid you back for. I'm  
3 wondering why those expenses didn't get put on the  
4 company credit card that you just testified you had  
5 used for miscellaneous health care expenses.

6 MR. BROOK: Objection to the form.

7 BY MR. RAMSEY:

8 A. I'm not sure. I am not sure.

9 Q. Based on those two exhibits, it looks  
10 like at least some would go on the company card and  
11 some for whatever reason wouldn't?

12 MR. BROOK: Objection to the form.

13 BY MR. RAMSEY:

14 A. That is true.

15 Q. You didn't pay the company card,  
16 correct?

17 A. No, I did not.

18 Q. I'm going to show you what we had  
19 marked as Exhibit 6 (indicating).

20 MR. RAMSEY: I don't know why I grabbed the  
21 non-Bates one. I know I got this one, Brian,  
22 sorry.

23 BY MR. RAMSEY:

D. Kleeberg - Ramsey - 12/19/18

1 Q. Let me know when you've had a chance to  
2 review Exhibit 6.

3 A. I'm all set.

4 Q. Have you seen Exhibit 6 before?

5 A. Yes.

6 Q. What is Exhibit 6?

7 A. It's about the pension plan.

8 Q. That's the pension benefit that you  
9 testified to in response to my question a little  
10 while ago?

11 A. Please repeat the question.

12 Q. When we were talking about your sources  
13 of monthly income, one of the sources was the  
14 pension benefit?

15 A. Yes.

16 Q. Is this the pension benefit that you  
17 were talking about?

18 A. Yes, it is.

19 Q. It looks like according to Exhibit 6  
20 you were receiving over \$2,000.00 a month?

21 A. Yes.

22 Q. I want you to jump to the last page of  
23 Exhibit 6. It's a three-page document, correct?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. The third page, there's a couple of  
3 lines for the participant's signatures. Do you see  
4 those?

5 A. Yes.

6 Q. Is that your signature on both of those  
7 lines?

8 A. Yes, it is.

9 Q. It looks like the date is 8/22/07,  
10 right?

11 A. Yes.

12 Q. The top signature line -- and correct  
13 me if you have a different understanding -- looks  
14 like it's requiring you to confirm that you weren't  
15 aware of any Qualified Domestic Relations Order,  
16 also known as a QDRO, that would attach to any  
17 portion of your benefit. Do you see that?

18 A. Yes.

19 Q. You signed that participant's signature  
20 box indicating that there was no such QDRO,  
21 correct?

22 A. Yes.

23 Q. Was that accurate as of the time when

D. Kleeberg - Ramsey - 12/19/18

1 you signed it?

2 A. No.

3 Q. Why did you sign it if it wasn't  
4 accurate?

5 A. I was told not to worry about it.

6 Q. Who told you not to worry about it?

7 A. Mark Shevlin.

8 Q. Mr. Shevlin of Eber Brothers told you  
9 not to worry about it?

10 A. Yes, that is correct.

11 Q. Did you consult with any counsel or  
12 with anyone else with expertise in that area to  
13 determine whether or not that was an appropriate  
14 course of action?

15 A. No.

16 Q. That ultimately caused some problems  
17 down the road, correct?

18 A. That is true.

19 Q. When were you and your wife divorced?

20 A. The date here is what?

21 MR. BROOK: You're asking for the date of  
22 finalization?

23 MR. RAMSEY: Yes.

D. Kleeberg - Ramsey - 12/19/18

1 BY MR. RAMSEY:

2 A. It was early 2000.

3 Q. So as of 2007, you were aware that your  
4 wife did, in fact, have a right to an interest in  
5 your pension?

6 A. Yes.

7 Q. Yes, but you still signed Exhibit 6?

8 A. Yes.

9 Q. Who paid for your divorce attorney back  
10 in the early 2000s?

11 A. Eber Brothers.

12 Q. How is it or why was it that Eber  
13 Brothers paid for it rather than you paying for  
14 your attorney yourself?

15 MR. BROOK: Objection to the form.

16 BY MR. RAMSEY:

17 A. Well, Lester and I negotiated an  
18 arrangement where in lieu of getting an increase in  
19 my income, which would show obviously to my soon to  
20 be ex-spouse, I was better off receiving a loan.

21 Q. So that the monies paid to your divorce  
22 attorney were characterized as a loan?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Was there any document memorializing  
2 that arrangement?

3 A. Not specifically on that.

4 Q. How, if at all, was it documented or  
5 memorialized?

6 A. I don't know.

7 Q. Do you yourself have anything in  
8 writing discussing that arrangement?

9 A. I do not.

10 Q. Have you ever paid back whatever was  
11 expended on your divorce lawyer?

12 A. No.

13 Q. As you sit here today, do you have an  
14 understanding of how much was paid on your behalf?

15 A. Do I specifically?

16 Q. Yes.

17 A. No.

18 Q. Do you have a ballpark?

19 A. Yes.

20 Q. What's your ballpark of how much the  
21 divorce attorney cost?

22 A. A couple hundred thousand.

23 MR. BROOK: Objection to the form.

D. Kleeberg - Ramsey - 12/19/18

1 THE WITNESS: I'm sorry.

2 BY MR. RAMSEY:

3 Q. Go ahead. You can answer.

4 A. A couple hundred thousand.

5 Q. That was Eber Brothers paying that?

6 A. That is correct.

7 Q. Okay, and that was essentially, to your  
8 understanding, meant to be part of your  
9 compensation package?

10 A. Yes.

11 Q. Your ex-wife ultimately sued Eber  
12 Brothers regarding the discrepancy with the QDRO,  
13 correct?

14 A. Yes.

15 Q. When do you recall that taking place?

16 A. I don't remember the exact date.

17 Q. Eber Brothers then had to pay your  
18 ex-wife her attorney's fees, correct?

19 A. That I do not know.

20 Q. Would you be surprised to learn that  
21 that was the ultimate result?

22 A. No.

23 Q. No reason to dispute that as you sit

D. Kleeberg - Ramsey - 12/19/18

1 here today?

2 A. No.

3 Q. Yes, but you're still receiving a  
4 pension benefit?

5 A. Yes.

6 Q. It's just less now that your wife or  
7 ex-wife has a portion of it, correct?

8 A. Yes.

9 Q. Okay, and that's the \$2,100.00 that you  
10 receive a month? Do you receive all of that or  
11 does a portion of that go to your ex-wife?

12 A. No, I receive all of it.

13 Q. Are you aware of the lawsuit that Eber  
14 Brothers was involved in regarding the Pension  
15 Benefit Guaranty Corporation?

16 A. Yes.

17 Q. Under underfunded liabilities?

18 A. Yes.

19 Q. How did you become aware of that  
20 lawsuit?

21 A. Through Wendy in our discussions as to  
22 how this could potentially affect my monthly  
23 benefits.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Were you still at Eber Brothers when  
2 you first became aware of this potential liability  
3 of the company?

4 A. Yes.

5 Q. Okay, and when you reference Wendy, I  
6 assume you're referring to Wendy Eber?

7 A. Yes.

8 Q. So you had discussions with Wendy about  
9 this issue?

10 A. Yes.

11 Q. What do you recall discussing with  
12 Wendy?

13 A. "To be patient and we are trying to  
14 work it out and it could affect you, but we're not  
15 really sure how everything is going to play out."

16 Q. You were concerned about the impact on  
17 your pension benefit?

18 A. Yes.

19 Q. The discussions you had with Wendy,  
20 were they around 2007 when you were still at Eber  
21 Brothers or just left or were they later in time?

22 A. Both.

23 Q. How often do you recall having

D. Kleeberg - Ramsey - 12/19/18

1 discussions with Wendy in sum and substance about  
2 what you just indicated, you know, discussing your  
3 concerns that your pension benefit might be  
4 affected?

5 MR. BROOK: Objection to the form.

6 BY MR. RAMSEY:

7 A. A few times.

8 Q. A few times in total or a few times a  
9 year?

10 A. A few times in total.

11 Q. When was the last time you recall any  
12 communication with Wendy regarding any concerns  
13 regarding your pension benefit?

14 A. I would say probably a year after I  
15 left Eber Brothers.

16 Q. Around 2008?

17 A. Correct.

18 Q. Ultimately you received your full  
19 pension and continue to receive your full pension,  
20 correct?

21 A. Yes.

22 Q. Do you have any understanding of the  
23 nature of the resolution that Eber Brothers

D. Kleeberg - Ramsey - 12/19/18

1 negotiated with PBGC or GC?

2 A. I know it was negotiated, but I do not  
3 have an understanding of how that worked.

4 Q. Are you aware that Lester gave up all  
5 of his rights to a pension benefit as part of a  
6 settlement so that others could continue to receive  
7 theirs?

8 A. No, I do not.

9 Q. This is the first time you're hearing  
10 that today?

11 A. Yes.

12 Q. The bottom line is that your pension  
13 benefit was never impacted?

14 A. Yes, it was.

15 Q. How was it impacted?

16 A. Because I wanted to take a lump sum,  
17 which would have put me in a much better position,  
18 especially leaving Eber Brothers, and I was not  
19 allowed to do that because we were underfunded.

20 Q. Yes, but you are still receiving a  
21 pension benefit?

22 A. Yes.

23 Q. I'm going to show you what we've marked

D. Kleeberg - Ramsey - 12/19/18

1 as Exhibit 7. Tell me when you've had a chance to  
2 review that (indicating).

3 A. Yes.

4 Q. All set?

5 A. Yes.

6 Q. Have you seen Exhibit 7 previously?

7 A. Yes.

8 Q. It looks like it's an e-mail exchange  
9 or chain with the subject line being, "Dan  
10 Kleeberg's benefit"?

11 A. Yes.

12 Q. Okay, and the date is August. Well,  
13 there's one on August 28, 2014 and one on August  
14 29, 2014, correct?

15 A. Yes.

16 Q. Do you recall reaching out to Wendy  
17 Eber in 2014, August of 2014, or thereabouts about  
18 your pension benefit?

19 A. I don't recall.

20 Q. Do you recall having concerns about any  
21 impact on your benefit when the PBGC took over the  
22 plan?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Would Wendy Eber have been the logical  
2 person for you to reach out to to discuss those  
3 concerns?

4 A. Yes.

5 Q. It looks like Wendy forwarded to you a  
6 response from a Michael Gallagher on August 29,  
7 2014?

8 A. Yes.

9 Q. Do you recall receiving that e-mail?

10 A. Yes.

11 Q. Did anything change as far as your  
12 monthly pension benefit following this exchange  
13 with Wendy?

14 A. No, it did not.

15 Q. So the fact that the PBGC took over the  
16 plan didn't impact you one way or the other?

17 A. No, it did not.

18 Q. I show you what I've marked as Exhibit  
19 8. Tell me when you've had a chance to review that  
20 (indicating).

21 A. Yes.

22 Q. Ready?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Have you seen Exhibit 8 previously?

2 A. Yes.

3 Q. It looks like that is an e-mail from  
4 you to Lester Eber on December 17, 2007?

5 A. Yes.

6 Q. You got under your signature block the  
7 title with Amerilawn. At that point, you were down  
8 in Florida with the new business?

9 A. Yes.

10 Q. The subject line, is "Benderson lease,"  
11 correct?

12 A. Yes.

13 Q. Was this one of the outreaches you were  
14 doing in return for the \$10,000.00 a month  
15 consulting fee?

16 A. Yes.

17 Q. You're referencing a Jeff, which we've  
18 been calling Randy. I assume Randy is Randy  
19 Benderson?

20 A. Yes.

21 Q. Who is Jeff that you're referencing?

22 A. Jeff was our sales rep that negotiated  
23 the original lease.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Do you recall reaching out to Randy  
2 Benderson either that day or the following morning?

3 A. Yes.

4 Q. What do you recall from that  
5 conversation?

6 A. That Randy referred me back to Jeff.

7 Q. To do what?

8 A. To see if there was anything he was  
9 willing to do.

10 Q. Ultimately Benderson wouldn't bulge,  
11 correct?

12 A. That is correct.

13 Q. Do you know the ultimate resolution of  
14 the dispute between Eber Brothers and Benderson?

15 A. No, I do not.

16 Q. Do you have an understanding that Eber  
17 Brothers was forced to pay some sum of money?

18 A. Yes.

19 Q. Do you have an idea of how much?

20 A. No, I do not.

21 Q. Do you have a ballpark idea of how  
22 much?

23 A. No, I do not.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Do you know how many years were  
2 remaining on the lease at the time?

3 A. Not specifically.

4 Q. Do you remember what the monthly lease  
5 payment was?

6 A. No.

7 Q. Hundreds of thousands of dollars  
8 remained on the lease? Is that fair?

9 A. I couldn't answer that.

10 Q. Yes, but you weren't able to negotiate  
11 a resolution with Mr. Benderson?

12 A. No, I was not.

13 Q. Prior to departing Eber Brothers or  
14 during the time that you were a consultant at Eber  
15 Brothers, do you recall any litigation or  
16 threatened litigation between Eber Brothers and a  
17 company known as D4?

18 A. D4?

19 Q. D4.

20 A. No.

21 Q. The same question with respect to a  
22 company known as Wolf or Wolf Concepts.

23 A. Litigation with Wolf?

D. Kleeberg - Ramsey - 12/19/18

1 Q. Litigation or threatened litigation.

2 A. Could you describe Wolf Concepts?

3 Q. Well, I'm asking you.

4 A. No.

5 Q. So if you have a recollection of them  
6 or litigation, that's my question.

7 A. No, no, no.

8 Q. All right, do you recall any litigation  
9 or threatened litigation between Eber Brothers and  
10 the Harris Beach law firm?

11 A. Do I recall? No.

12 Q. Any knowledge or recollection of any  
13 litigation between Eber Brothers and Harris Beach?

14 MR. BROOK: Objection to the form.

15 BY MR. RAMSEY:

16 A. At that time?

17 Q. Yes.

18 A. No.

19 Q. Subsequently have you learned about any  
20 litigation between Eber Brothers and Harris Beach?

21 A. Yes.

22 Q. How did you learn about that?

23 A. Through discovery.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Through this case?

2 A. Yes.

3 Q. Prior to this case being commenced, any  
4 knowledge of the Harris Beach lawsuit?

5 A. No.

6 Q. While at Eber Brothers, any knowledge  
7 of litigation or threatened litigation between Eber  
8 Brothers and the teamsters?

9 A. Please rephrase that again.

10 Q. Sure, the same question that I've asked  
11 about the other entities, my last couple of  
12 questions were the subject of any knowledge of  
13 litigation or threatened litigation between Eber  
14 Brothers and the teamsters.

15 A. Litigation? Not negotiations?  
16 Litigation, right?

17 Q. Litigation or threatened litigation  
18 that there was negotiation to avoid litigation,  
19 that would be encompassed by threatened litigation.

20 MR. BROOK: Objection to the form.

21 BY MR. RAMSEY:

22 A. No.

23 Q. No knowledge of any dispute with the

D. Kleeberg - Ramsey - 12/19/18

1 teamsters while you were at Eber Brothers?

2 A. Yes.

3 Q. What do you recall as far as a dispute  
4 with the teamsters?

5 A. Potential strike.

6 Q. What role, if any, did you have in  
7 addressing that?

8 A. Discussions with the manager in our  
9 warehouse.

10 Q. What type of discussions did you have?

11 A. The benefits of not going with the  
12 teamsters.

13 Q. What time period are we talking here?

14 A. Back in probably in the middle to late  
15 1990s, somewhere in that neighborhood.

16 Q. As part of your discussions with the  
17 manager, did you have discussions with Lester about  
18 the status of what was going on?

19 A. Yes.

20 Q. What do you recall discussing with  
21 Lester?

22 A. Updates.

23 Q. What do you recall Lester saying to you

D. Kleeberg - Ramsey - 12/19/18

1 or you saying to Lester as far as the strategy for  
2 trying to address this?

3 A. To continue to explain what we do for  
4 them.

5 Q. Give me an example. What types of  
6 things would you convey that you would do for them?

7 A. The benefits we offer them and the way  
8 they have been treated.

9 Q. What was the ultimate resolution of  
10 that?

11 A. They did not go on strike.

12 Q. Did this happen once or multiple times?

13 A. You're going to need to rephrase that.

14 Q. Sure, the discussions that you had to  
15 avoid a strike, was that a one time occurrence or  
16 were there multiple times where a strike was  
17 threatened?

18 A. With me one time.

19 Q. Are you aware of other times that  
20 someone else had to deal with --

21 A. Yes.

22 Q. (Continuing) at Eber Brothers?

23 MR. BROOK: Remember to let him finish the

D. Kleeberg - Ramsey - 12/19/18

1 question.

2 THE WITNESS: Oh, I'm sorry.

3 BY MR. RAMSEY:

4 Q. Was that before or after the instance  
5 in which you dealt with it?

6 A. Please restate the question.

7 Q. Sure, you just indicated that there  
8 were multiple times that a strike was threatened.  
9 You were only tasked with dealing with that one  
10 occasion. On those other occasions, did those  
11 occur before the time that you were involved or  
12 after the time that you were involved?

13 A. Before.

14 Q. Do you know who dealt with it those  
15 times on behalf of the company?

16 A. A Mr. Michael Jeziorski,  
17 J-E-Z-I-O-R-S-K-I.

18 Q. Do you know whether there was ever a  
19 strike in those previous occasions?

20 A. I don't recall. I don't believe so.

21 Q. Do you recall playing any role in those  
22 previous instances in which a strike was  
23 threatened?

D. Kleeberg - Ramsey - 12/19/18

1 A. No.

2 Q. I'm going to show you three exhibits,  
3 9, 10 and 11, and I'll ask you questions about all  
4 of them (indicating).

5 A. Sure.

6 Q. Let me know when you've had a chance to  
7 review all three.

8 A. I have.

9 Q. We touched on a moment ago about  
10 certain loans that Eber Brothers made to you?

11 A. Yes.

12 Q. Do you recall that questioning?

13 A. Yes, yes.

14 Q. Exhibit 9, have you seen that before?

15 A. This is all Exhibit 9 (indicating)?

16 Q. No.

17 MR. BROOK: This page (indicating).

18 BY MR. RAMSEY:

19 A. Yes.

20 Q. What is Exhibit 9?

21 A. The loan with the interest rate to be  
22 paid annually in full by December 31 and it looks  
23 like 2000.

D. Kleeberg - Ramsey - 12/19/18

1 Q. When you say "the loan", Exhibit 9 is  
2 entitled Promissory Note, correct?

3 A. Yes.

4 Q. You were promising to pay to Eber  
5 Brothers the sum of \$15,000.00?

6 A. Yes.

7 Q. What was the \$15,000.00 loaned to you  
8 for?

9 A. I believe it was for my son's college  
10 education.

11 Q. Okay, and is --

12 A. His education.

13 Q. I'm sorry.

14 Is that your signature that appears on the  
15 bottom of Exhibit 9?

16 A. Yes.

17 Q. The date of the Promissory Note is  
18 September 27, 1999, correct?

19 A. Yes.

20 Q. Was this one of multiple loans that you  
21 had taken from Eber Brothers or was this the first?

22 MR. BROOK: Objection to the form.

23 MR. RAMSEY: That was poorly asked. Let me

D. Kleeberg - Ramsey - 12/19/18

1 strike that.

2 BY MR. RAMSEY:

3 Q. Exhibit 9, is this the first loan that  
4 you took from Eber Brothers?

5 A. I don't recall.

6 Q. Do you recall executing a document  
7 similar to Exhibit 9 entitled a Promissory Note on  
8 more than one occasion for either a different  
9 amount, a different date or different payment  
10 terms?

11 A. Not necessarily the way this looks.

12 Q. Do you recall executing other documents  
13 memorializing in some way loans that Eber Brothers  
14 had made to you?

15 A. Yes.

16 Q. Let's look at Exhibits 10 and 11.  
17 Exhibit 10 first, is Exhibit 10 in front of you?

18 A. Yes.

19 Q. That is an August 11, 2003 letter to  
20 you from John Ryan of Eber Brothers, correct?

21 A. Yes.

22 Q. It indicates on the second paragraph  
23 that, "According to our records, the balance at May

D. Kleeberg - Ramsey - 12/19/18

1 31, 2003 was \$279,257.35," correct?

2 A. Yes.

3 Q. Is it your understanding that that was  
4 the amount of money that you owed to Eber Brothers  
5 for loans they advanced as of that date?

6 MR. BROOK: Objection to the form.

7 BY MR. RAMSEY:

8 A. In lieu of my salary, yes.

9 Q. What do you mean by that?

10 A. This I think I stated that before  
11 earlier.

12 Q. When you were talking about you  
13 received some amount per month as part of a loan?

14 MR. BROOK: Objection to the form.

15 BY MR. RAMSEY:

16 A. I received loans over a period of time  
17 in lieu of increasing my salary.

18 Q. Understood, but the \$279,000.00 figure  
19 here on Exhibit 10, is it your understanding that  
20 was the amount that you owed from these loans as of  
21 that date, August 11, 2003?

22 MR. BROOK: Objection to the form.

23 BY MR. RAMSEY:

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. Your signature appears on the bottom of  
3 Exhibit 10, correct?

4 A. Yes.

5 Q. Okay, and the last paragraph of the  
6 letter indicates that if you had any exceptions,  
7 essentially any disagreements, that you should  
8 bring it to their attention, correct?

9 A. Yes.

10 Q. Do you recall ever bringing any  
11 exceptions or any disagreements to the attention of  
12 Mr. Ryan?

13 A. No.

14 Q. I will have you turn to Exhibit 11 now.

15 A. Yes.

16 Q. A very similar letter to Exhibit 10,  
17 correct?

18 A. Yes.

19 Q. It's just approximately a year later or  
20 exactly a year later, August 11, 2004, right?

21 A. Yes.

22 Q. At this point, the balance of your  
23 loans is indicated to be \$339,065.73?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. Okay, and you signed off at the bottom  
3 attesting to the accuracy of that statement?

4 A. Yes.

5 Q. Do you recall the total amount owed at  
6 the time of your departure in 2007?

7 A. No.

8 MR. BROOK: Objection to the form.

9 THE WITNESS: Sorry.

10 BY MR. RAMSEY:

11 Q. Did you ever pay any of these monies  
12 back to Eber Brothers?

13 A. No.

14 Q. After you left Eber Brothers, you began  
15 collecting the \$10,000.00 a month consulting fee,  
16 correct?

17 A. Yes.

18 Q. Is my understanding correct that any  
19 obligations you might have had to repay these loans  
20 was discharged as part of your bankruptcy in 2010?

21 MR. BROOK: Objection to the form.

22 BY MR. RAMSEY:

23 A. I don't know.

D. Kleeberg - Ramsey - 12/19/18

1 Q. As you sit here today, is it your  
2 position or your understanding that you still owe  
3 this money to Eber Brothers?

4 A. No.

5 Q. Was that discharged as part of your  
6 bankruptcy?

7 A. I would have to look at my records.

8 Q. Okay, but as you sit here today, you're  
9 certain that you never paid any of that back?

10 A. Yes.

11 MR. RAMSEY: Off the record.

12 (Whereupon, an off-the-record discussion was  
13 held.)

14 BY MR. RAMSEY:

15 Q. You're ready to continue, Mr. Eber?

16 A. Sure.

17 Q. I asked you a number of questions about  
18 litigation that you may or may not have been aware  
19 of. One of the questions I asked was Wolf or Wolf  
20 Concepts.

21 A. Excuse me?

22 Q. One of the questions I asked was Wolf  
23 or Wolf Concepts and you weren't sure about that

D. Kleeberg - Ramsey - 12/19/18

1 one. Were you aware of a dispute with the Petrogen  
2 Vodka?

3 A. With Petrogen?

4 Q. Yes.

5 A. Patron?

6 Q. Petrogen.

7 A. Petrogen Vodka, no.

8 Q. So in your time at Eber Brothers,  
9 you're not aware of a dispute, litigation or  
10 threatened litigation with a entity known as  
11 Petrogen Vodka?

12 A. No.

13 Q. The Benderson litigation we talked a  
14 little bit about, do you have an understanding  
15 whether the ultimate resolution was paid by the  
16 company or by Lester individually?

17 A. I do not know.

18 Q. If I told you that Lester paid that  
19 settlement himself, any reason to dispute that?

20 A. No.

21 Q. With respect to the lawsuit regarding  
22 the Pension Benefit Guaranty Corporation, if I told  
23 you that Lester forewent \$1.5 million in benefits,

D. Kleeberg - Ramsey - 12/19/18

1 any reason to dispute that?

2 A. Please repeat that.

3 Q. Sure, the resolution with the PBGC, if  
4 I told you that Lester forewent \$1.5 million in  
5 benefits, would that surprise you? Do you have any  
6 reason to dispute that?

7 MR. BROOK: Objection to the form.

8 BY MR. RAMSEY:

9 A. That he paid directly to?

10 Q. He either paid or waived his right to  
11 future pension benefits.

12 MR. BROOK: It's the same objection.

13 BY MR. RAMSEY:

14 A. Would that surprise me?

15 Q. Yes, or do you have any reason to  
16 dispute it?

17 MR. BROOK: Objection to the form.

18 BY MR. RAMSEY:

19 Q. That's the better question. Let's go  
20 with that. Do you have any reason to dispute it?

21 A. No.

22 Q. Let me show you what I've had marked as  
23 Exhibit 12 for identification. Let me know when

D. Kleeberg - Ramsey - 12/19/18

1 you've had a chance to review that (indicating).

2 A. Okay.

3 Q. Have you seen Exhibit 12 before?

4 A. Yes.

5 Q. That is an e-mail from September 1,  
6 2009 to Lester from you, right?

7 A. Yes.

8 Q. What was the purpose of you sending  
9 that e-mail to Lester?

10 A. Lester had reduced my consulting fee  
11 substantially and I was in a position where I  
12 needed to ascertain a job and my belief was to  
13 revisit the Southern possible opportunity and I  
14 needed -- or I didn't need -- I was hoping that  
15 Lester would call them on my behalf.

16 Q. So the discussion that you had with the  
17 principals of Southern back in 2007 about coming  
18 aboard, you wanted to restart those discussions?

19 A. That is correct.

20 Q. Okay, and the date of this e-mail of  
21 2009, you were still receiving a consulting fee?

22 A. Not at the level that I had before.

23 Q. What level was it at this point?

D. Kleeberg - Ramsey - 12/19/18

1           A.    I believe it was reduced down to about  
2   6,500.

3           Q.    This is essentially two years after you  
4   had left Eber Brothers though, correct?

5           A.    That is correct.

6           Q.    Okay, so your testimony earlier that it  
7   was about a year that you received this consulting  
8   fee, that was a little light?

9           MR. BROOK:  Objection to the form.

10          BY MR. RAMSEY:

11          A.    Say that.  Please say that again.

12          MR. BROOK:  When did you receive it, the  
13   date?

14          BY MR. RAMSEY:

15          Q.    You received it for at least two years  
16   and not a little over a year like you previously  
17   testified, correct?

18          MR. BROOK:  Objection to the form.

19          BY MR. RAMSEY:

20          A.    Yes.

21          Q.    You were asking in Exhibit 12 that  
22   Lester continue that consulting fee payment,  
23   correct?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. You indicated that you don't want it to  
3 come directly out of his pocket. Why did you write  
4 that?

5 A. At this time, he was negotiating with  
6 employees that he had signed personal contracts  
7 with and I wanted Lester to comply with our  
8 discussion, our original discussion, when I left  
9 Eber Brothers that the monies that we negotiated on  
10 for when I left would be continuous to help me get  
11 a fresh start and I wanted it to come out of our  
12 corporation.

13 Q. When you say "the monies that we  
14 negotiated", is that the \$10,000.00 consulting fee?

15 A. That is correct.

16 Q. Were you aware that Lester was paying  
17 other members of your family out of his pocket for  
18 various items --

19 A. Yes.

20 Q. (Continuing) and you didn't want his  
21 generosity to be taken advantage of? Is that fair?

22 MR. BROOK: Objection to the form.

23 BY MR. RAMSEY:

D. Kleeberg - Ramsey - 12/19/18

1 A. No.

2 Q. No? When you say you didn't want it to  
3 come out of his pocket, you didn't want him to  
4 incur the expense personally?

5 A. Yes.

6 Q. In the last sentence of your e-mail you  
7 write, "I might be the only one outside of yourself  
8 who truly appreciates what we had." What were you  
9 referring to there?

10 A. When Eber Brothers was successful and  
11 we were doing well, it provided my family with a  
12 very nice living.

13 Q. The downturn in the market changed  
14 that?

15 MR. BROOK: Objection to the form.

16 BY MR. RAMSEY:

17 A. No.

18 Q. Southern Spirits coming in didn't  
19 change the performance of Eber Brothers?

20 A. It did, but that was not the downturn.

21 Q. Okay, but the downturn happened as a  
22 result of Southern coming into the market, correct?

23 MR. BROOK: Objection to the form.

D. Kleeberg - Ramsey - 12/19/18

1 BY MR. RAMSEY:

2 A. No.

3 Q. You testified, I think, earlier this  
4 morning that when Southern came in that they  
5 essentially wiped out Eber Brothers?

6 A. That is correct.

7 Q. How long did you continue to receive  
8 the consulting fee after the date of Exhibit 10 or  
9 Exhibit 12, excuse me, as September of 2009? How  
10 long did you continue to receive the consulting  
11 fee?

12 MR. BROOK: Objection to the form.

13 BY MR. RAMSEY:

14 A. Well, you stated here almost -- what --  
15 a year and a half, two years, a year and a half.

16 Q. Did you continue to receive it after  
17 September, 2009?

18 MR. BROOK: The date of his e-mail.

19 BY MR. RAMSEY:

20 A. No.

21 Q. So your request to Lester that you  
22 continue to receive the consulting fee that you  
23 made in the body of this e-mail, that was

D. Kleeberg - Ramsey - 12/19/18

1 essentially rejected?

2 MR. BROOK: Objection to the form.

3 BY MR. RAMSEY:

4 A. Yes.

5 Q. So it's your recollection and  
6 understanding that subsequent to this e-mail that  
7 you received no additional payments as a consulting  
8 fee?

9 A. No, I don't believe I did.

10 Q. You're not sure one way or the other?

11 A. I don't believe that I did, no, no.

12 Q. No, you're not sure?

13 A. No, I don't -- I don't -- I did not get  
14 any more consulting fees.

15 Q. I show you what we've had marked as  
16 Exhibit 13 for identification. Let me know when  
17 you've had a chance to review that (indicating).

18 A. Okay.

19 Q. Have you had a chance to review Exhibit  
20 13?

21 A. Yes.

22 MR. BROOK: Note again for the record just a  
23 standing objection to the exhibits lacking Bates

D. Kleeberg - Ramsey - 12/19/18

1 numbers, but you can proceed.

2 BY MR. RAMSEY:

3 Q. Have you seen Exhibit 13 before?

4 A. Yes.

5 Q. Exhibit 13 is an e-mail from you to  
6 Lester dated October 9, 2009, correct?

7 A. Yes.

8 Q. What was the purpose of this e-mail?

9 A. I was looking for to start on my own  
10 back in the liquor industry and I needed to acquire  
11 a supplier. Lester recommended that I get a hold  
12 of a Manny Bergeron who was in charge of Camus  
13 Cognac and to follow up with him to see if I could  
14 work out some kind of deal.

15 Q. So you were reaching out to Lester for  
16 some help in initiating this contact?

17 A. That is correct. That is correct.

18 Q. In fact, the first sentence writes,  
19 "Thank you again for your help, support and  
20 guidance," correct?

21 A. Yes.

22 Q. Was that not just for this particular  
23 ask but the time that you spent with Eber Brothers?

D. Kleeberg - Ramsey - 12/19/18

1           A.    No, for this specific help that Lester  
2   gave me.

3           Q.    The help, support and guidance that you  
4   referenced is limited to this particular issue with  
5   Manny?

6           A.    Yes.

7           Q.    You write, "I can't tell you enough how  
8   much it means to me," and the next sentence is,  
9   "You have always been there for me and my family.  
10   I will never forget that." That relates more  
11   broadly to your time at Eber Brothers?

12          A.    Yes.

13          Q.    Were you able to get in touch with  
14   Manny?

15          A.    Yes.

16          Q.    Okay, and ultimately was that the  
17   cognac company that you went to work for for some  
18   period of time?

19          A.    Yes.

20          Q.    That was facilitated in some way by  
21   Lester?

22          A.    Yes.

23          Q.    You were appreciative of Lester for

D. Kleeberg - Ramsey - 12/19/18

1 doing that?

2 A. Yes.

3 Q. Let me show you what we have marked as  
4 Exhibit 14. Let me know when you've had a chance  
5 to review that (indicating).

6 A. Okay, yes.

7 Q. You've seen Exhibit 14 before?

8 A. Yes.

9 Q. You were again reaching out to Lester  
10 for some assistance for facilitating an  
11 introduction?

12 A. Through, yes, through my supplier John  
13 Chappell.

14 Q. Specifically John Chappell is sending  
15 an e-mail? Exhibit 14 is an e-mail from John  
16 Chappell to Lester CCing you dated December 9, 2013  
17 with the subject line of, "Referral to  
18 Constellation," correct?

19 A. Yes.

20 Q. Who is John Chappell?

21 A. John Chappell is the owner of PaQui  
22 Tequila Holdings.

23 Q. He was reaching out to Lester?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. What was the purpose of the outreach?

3 A. John wanted to associate himself with a  
4 major supplier that had a void in the tequila  
5 industry and was hoping that they would take him on  
6 and help him with distribution.

7 Q. Based on the signature block AT the  
8 bottom of Exhibit 14, it looks like you were VP of  
9 sales of PaQui Tequila at that point?

10 A. Yes.

11 Q. Okay, and was Mr. Chappell reaching out  
12 to Lester at your suggestion?

13 A. No.

14 Q. He was independently reaching out to  
15 Lester?

16 A. No, he had asked me if it would be all  
17 right for him to reach out to Lester.

18 Q. Okay, so he knew your relationship with  
19 Lester --

20 A. Yes.

21 Q. (Continuing) and he checked with you to  
22 make sure that it was okay?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Did you have any objection to him doing  
2 so?

3 A. No.

4 Q. Were you hopeful that Lester might be  
5 able to facilitate what John was seeking here?

6 A. Yes.

7 Q. Ultimately that didn't work out or did  
8 it?

9 A. No, it did not.

10 Q. Why didn't it work out?

11 A. Constellation did not need a start-up  
12 company to develop another tequila.

13 Q. So Lester tried to facilitate  
14 something, but Constellation wasn't interested?

15 A. That is correct.

16 Q. I show you what we've marked as Exhibit  
17 15. It's a two-page document (indicating).

18 A. All right.

19 Q. Ready?

20 A. Yes.

21 Q. Have you seen Exhibit 15 before?

22 A. Yes.

23 Q. It looks like an e-mail chain between

D. Kleeberg - Ramsey - 12/19/18

1 primarily you, Lester and a Mr. Jeff Greenstein?

2 A. Yes.

3 Q. Who is Mr. Greenstein?

4 A. Greenstein, Jeff was my sales rep for  
5 New York for a brand called Kannon Organic Vodka.

6 Q. The middle e-mail is dated February 5,  
7 2015 from you to Lester. Were you hoping Lester  
8 could facilitate the introduction for Jeff at  
9 Southern Wines?

10 A. That is correct.

11 Q. Okay, and what was Lester's response?

12 A. He gave a contact name for Jeff to  
13 reach out to.

14 Q. Okay, and that's the e-mail above that  
15 in which Lester's writing for him to contact  
16 Elizabeth Toohig, T-O-O-H-I-G?

17 A. Yes.

18 Q. Did you know Ms. Toohig?

19 A. Yes.

20 Q. Was there a reason that you couldn't  
21 suggest to Mr. Greenstein to contact Elizabeth?

22 A. Well, since Lester was working in  
23 conjunction with Southern, I thought his

D. Kleeberg - Ramsey - 12/19/18

1 relationship would be stronger than mine.

2 Q. Okay, so you were hoping again that  
3 Lester would facilitate something to help Jeff out?

4 A. Yes.

5 Q. Do you know whether Jeff reached out to  
6 Ms. Toohig?

7 A. Yes.

8 Q. Do you recall the result was that he  
9 was able to obtain a position?

10 A. No.

11 Q. You don't know or he was not?

12 A. No, I'm sorry. No, he did not.

13 Q. Do you know whether he was able to  
14 touch base or connect with Ms. Toohig?

15 A. Yes.

16 Q. For whatever reason, the position never  
17 materialized?

18 A. That is correct.

19 Q. Next I want to show you Exhibit 16  
20 (indicating).

21 A. I'm ready.

22 Q. Okay, and have you seen Exhibit 16  
23 before?

D. Kleeberg - Ramsey - 12/19/18

1 A. Yes.

2 Q. This is an e-mail from you to Lester  
3 dated February 5, 2016, correct?

4 A. Yes.

5 Q. Okay, and what was the purpose of this  
6 e-mail?

7 A. Kannon Organic Vodka had shut down in  
8 the United States. I was looking for a job within  
9 the industry. I had come across this PBG Spirits  
10 investment and knew that Lester or John Slocum knew  
11 them because they did business with them and I  
12 wanted to see if they could make a call on my  
13 behalf.

14 Q. Okay, so you were hoping Lester could  
15 facilitate an introduction to one of the principals  
16 of this PBG Spirits?

17 A. Yes.

18 Q. You were comfortable approaching Lester  
19 or making this ask of Lester at this point?

20 A. Yes.

21 Q. Based on the history that you had  
22 together?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Did Lester respond to this e-mail  
2 either in writing or verbally?

3 A. I don't remember. I don't recall. I  
4 think John Slocum responded back to me.

5 Q. Were you ever able to get in touch with  
6 anyone from PBG Spirits?

7 A. No.

8 Q. I want to spend a little time talking  
9 about your mother. Did she have a will when she  
10 passed away? Do you know?

11 A. Yes.

12 Q. Who's the executor of her estate?

13 A. My sister Lisa Stein.

14 Q. To your knowledge, does Lisa have a  
15 copy of your mother's will?

16 A. To my knowledge, yes.

17 MR. RAMSEY: I'll note that I would like to  
18 make a document request for that will. I can note  
19 that for the record and I'll follow up in writing.

20 BY MR. RAMSEY:

21 Q. Your mother passed away in 2014 you  
22 said?

23 A. Yes.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Prior to her passing away, how often  
2 would you speak with her?

3 A. Up till when she got very ill, probably  
4 once a month, maybe twice a month.

5 Q. Where was she residing at the time that  
6 she passed away?

7 A. In Buffalo, New York.

8 Q. Okay, and you told me this morning that  
9 at least some of those conversations would be you  
10 updating her on the status of the Eber companies?

11 A. When she would ask a question.

12 Q. Okay, and I think you told me that  
13 obviously when you were working there you had some  
14 firsthand knowledge, but even after you left you  
15 were able to get knowledge from various sources to  
16 get some updates?

17 A. Yes.

18 Q. Do you know other than you whether your  
19 mother had any source, any other source of  
20 knowledge, about any of the Eber companies, of  
21 their performance or anything that was going on?

22 MR. BROOK: Objection to the form.

23 BY MR. RAMSEY: